

Subtitle B—Federal Agency Regulations for Grants and Agreements

CHAPTER III—DEPARTMENT OF HEALTH AND HUMAN SERVICES

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PART 376—NONPROCUREMENT DEBARMENT AND SUSPENSION

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376.935 Disqualified (HHS supplement to government-wide definition at 2 CFR 180.935).

376.995 Principal (HHS supplement to government-wide definition at 2 CFR 180.995).

Subpart J [Reserved]

AUTHORITY: 5 U.S.C. 301; 31 U.S.C. 6101 (note); E.O. 12689 (3 CFR, 1989 Comp., p. 235); E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 11738 (3 CFR, 1973 Comp., p. 799).

SOURCE: 72 FR 9234, Mar. 1, 2007, unless otherwise noted.

§ 376.10 What does this part do?

This part adopts the Office of Management and Budget (OMB) guidance in subparts A through I of 2 CFR part 180, as supplemented by this part, as the Department of Health and Human Services (HHS or Department) policies and procedures for nonprocurement debarment and suspension. HHS thereby gives regulatory effect to the OMB guidance as supplemented by this part. This part satisfies the requirements in 2 CFR 180.20, section 3 of Executive Order 12549, “Debarment and Suspension” (3 CFR 1986 Comp., p. 189), Executive Order 12689, “Debarment and Suspension” (3 CFR 1989 Comp., p. 235) and 31 U.S.C. 6101 note (Section 2455, Pub. L. 103-355, 108 Stat. 3327).

§ 376.20 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in subparts A through I of 2 CFR part 180 (see table at 2 CFR 180.100(b)), apply to you if you are a—

(a) Participant or principal in a “covered transaction” under subpart B of 2 CFR part 180, as supplemented by this part, and the definition of nonprocurement transaction” at 2 CFR 180.970.

(b) Respondent in HHS suspension or debarment action;

(c) HHS debarment or suspension official;

(d) HHS grants officer, agreements officer, or other HHS official authorized to enter into any type of nonprocurement transaction that is a covered transaction.

§ 376.30 What policies and procedures must I follow?

The policies and procedures that you must follow are the policies and procedures specified in each applicable section of the OMB guidance in subparts A through I of 2 CFR part 180, including the corresponding section that HHS published in 2 CFR part 376 identified

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by the same section number. The contracts under a nonprocurement transaction, that are covered transactions, for example, are specified by section 220 of the OMB guidance (*i.e.*, 2 CFR 180.220) as supplemented by section 220 in this part (*i.e.*, 2 CFR 376.220). For any section of OMB guidance in subparts A through I of 2 CFR part 180 that has no corresponding section in this part, HHS policies and procedures are those in the OMB guidance at 2 CFR part 180.

Subpart A—General

§ 376.137 Who in the Department of Health and Human Services (HHS) may grant an exception to let an excluded person participate in a covered transaction?

The HHS Debarring/Suspension Official has the authority to grant an exception to let an excluded person participate in a covered transaction as provided at 2 CFR 180.135.

§ 376.147 Does an exclusion from participation in Federal health care programs under Title XI of the Social Security Act affect a person's eligibility to participate in nonprocurement and procurement transactions?

Any individual or entity excluded from participation in Medicare, Medicaid, and other Federal health care programs under Title XI of the Social Security Act, 42 U.S.C. 1320a-7, 1320a-7a, 1320c-5, or 1395ccc, and implementing regulation at 42 CFR part 1001, will be subject to the prohibitions against participating in covered transactions, as set forth in this part and part 180, and is prohibited from participating in all Federal government procurement programs and nonprocurement programs. For example, if an individual or entity is excluded by the HHS Office of the Inspector General from participation in Medicare, Medicaid, and/or other Federal health care programs, in accordance with 42 U.S.C. 1320a-7, then that individual or entity is prohibited from participating in all

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Federal government procurement and nonprocurement programs (42 CFR part 1001).

Subpart B—Covered Transactions

§ 376.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

In addition to the contracts covered under 2 CFR 180.220(b), this part also applies to all lower tiers of subcontracts under covered nonprocurement transactions, as permitted under the OMB guidance at 2 CFR 180.220(c). (See optional lower tier coverage in the diagram in the appendix to 2 CFR part 180.)

Subpart C—Responsibilities of Participants Regarding Transactions

§ 376.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

To communicate the requirements to lower-tier participants, you must include a term or condition in the lower-tier transaction requiring the lower-tier participant's compliance with 2 CFR part 180, as supplemented by this subpart.

§ 376.370 What are the obligations of Medicare carriers and intermediaries?

Because Medicare carriers, intermediaries and other Medicare contractors undertake responsibilities on behalf of the Medicare program (Title XVIII of the Social Security Act), these entities assume the same obligations and responsibilities as the HHS Medicare officials responsible for the Medicare Program with respect to actions under 2 CFR part 376. This would include the requirement for these entities to check the Excluded Parties List System (EPLS) and take necessary steps to effect this part.

Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

§ 376.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

To communicate to a participant the requirements described in 2 CFR 180.435, you must include a term or condition in the transaction that requires the participant's compliance with subpart C of 2 CFR part 180, as supplemented by subpart C of this part, and require the participant to include a similar term or condition in lower-tier covered transactions.

Subpart E—Excluded Parties List System [Reserved]**Subpart F—General Principles Relating to Suspension and Debarment Actions [Reserved]****Subpart G—Suspension [Reserved]****Subpart H—Debarment [Reserved]****Subpart I—Definitions**

§ 376.935 Disqualified. (HHS supplement to government-wide definition at 2 CFR 180.935).

Disqualified means persons prohibited from participating in specified federal procurement and nonprocurement transactions pursuant to the statutes listed in 2 CFR 180.935, and pursuant to Title XI of the Social Security Act (42 U.S.C. 1320a-7, 1320a-7a, 1320c-5, and 1395ccc) as enforced by the HHS Office of the Inspector General.

§ 376.995 Principal (HHS supplement to government-wide definition at 2 CFR 180.995).

Principal means individuals, in addition to those listed at 2 CFR 180.995, who participate in HHS covered transactions including:

- (a) Providers of federally required audit services; and
- (b) Researchers.

Subpart J [Reserved]**PART 382—REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE) (Eff. 1-11-2010)**

Sec.

382.10 What does this part do?

382.20 Does this part apply to me?

382.30 What policies and procedures must I follow?

Subpart A [Reserved]**Subpart B—Requirements for Recipients Other Than Individuals**

382.225 Whom in HHS does a recipient other than an individual notify about a criminal drug conviction?

Subpart C—Requirements for Recipients Who Are Individuals

382.300 Whom in HHS does a recipient who is an individual notify about a criminal drug conviction?

Subpart D—Responsibilities of Agency Awarding Officials

382.400 What method do I use as an agency awarding official to obtain a recipient's agreement to comply with the OMB guidance?

Subpart E—Violations of This Part and Consequences

382.500 Who in HHS determines that a recipient other than an individual violated the requirements of this part?

382.505 Who in HHS determines that a recipient who is an individual violated the requirements of this part?

Subpart F [Reserved]

AUTHORITY: 41 U.S.C. 701-707.

SOURCE: 74 FR 58190, Nov. 12, 2009, unless otherwise noted.

EFFECTIVE DATE NOTE: At 74 FR 58190, Nov. 12, 2009, part 382 was added, effective Jan. 11, 2010.

§ 382.10 What does this part do?

This part requires that the award and administration of HHS grants and cooperative agreements comply with Office of Management and Budget (OMB) guidance implementing the portion of the Drug-Free Workplace Act of 1988

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(41 U.S.C. 701–707, as amended, hereafter referred to as “the Act”) that applies to grants. It thereby—

(a) Gives regulatory effect to the OMB guidance (Subparts A through F of 2 CFR part 182) for the HHS grants and cooperative agreements; and

(b) Establishes HHS policies and procedures for compliance with the Act that are the same as those of other Federal agencies, in conformance with the requirement in 41 U.S.C. 705 for Governmentwide implementing regulations.

§ 382.20 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in subparts A through F of 2 CFR part 182 (see table at 2 CFR 182.115(b)) apply to you if you are a—

Section of OMB guidance	Section in this part where supplemented	What the supplementation clarifies
(1) 2 CFR 182.225(a)	§ 382.225	Whom in HHS a recipient other than an individual must notify if an employee is convicted for a violation of a criminal drug statute in the workplace.
(2) 2 CFR 182.300(b)	§ 382.300	Whom in HHS a recipient who is an individual must notify if he or she is convicted of a criminal drug offense resulting from a violation occurring during the conduct of any award activity.
(3) 2 CFR 182.500 ...	§ 382.500	Who in HHS is authorized to determine that a recipient other than an individual is in violation of the requirements of 2 CFR part 182, as implemented by this part.
(4) 2 CFR 182.505 ...	§ 382.505	Who in HHS is authorized to determine that a recipient who is an individual is in violation of the requirements of 2 CFR part 182, as implemented by this part.

(c) *Sections of the OMB guidance that this part does not supplement.* For any section of OMB guidance in subparts A through F of 2 CFR part 182 that is not listed in paragraph (b) of this section, HHS policies and procedures are the same as those in the OMB guidance.

Subpart A [Reserved]

Subpart B—Requirements for Recipients Other Than Individuals

§ 382.225 Whom in HHS does a recipient other than an individual notify about a criminal drug conviction?

A recipient other than an individual that is required under 2 CFR 182.225(a) to notify Federal agencies about an employee’s conviction for a criminal drug offense must notify each HHS office from which it currently has an award.

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(a) Recipient of an HHS grant or cooperative agreement; or

(b) HHS awarding official.

§ 382.30 What policies and procedures must I follow?

(a) *General.* You must follow the policies and procedures specified in applicable sections of the OMB guidance in subparts A through F of 2 CFR part 182, as implemented by this part.

(b) *Specific sections of OMB guidance that this part supplements.* In implementing the OMB guidance in 2 CFR part 182, this part supplements four sections of the guidance, as shown in the following table. For each of those sections, you must follow the policies and procedures in the OMB guidance, as supplemented by this part.

Subpart C—Requirements for Recipients Who Are Individuals

§ 382.300 Whom in HHS does a recipient who is an individual notify about a criminal drug conviction?

A recipient who is an individual and is required under 2 CFR 182.300(b) to notify Federal agencies about a conviction for a criminal drug offense must notify each HHS office from which it currently has an award.

Subpart D—Responsibilities of Agency Awarding Officials

§ 382.400 What method do I use as an agency awarding official to obtain a recipient’s agreement to comply with the OMB guidance?

To obtain a recipient’s agreement to comply with applicable requirements in the OMB guidance at 2 CFR part 182, you must include the following term or condition in the award:

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Drug-free workplace. You as the recipient must comply with drug-free workplace requirements in Subpart B (or Subpart C, if the recipient is an individual) of part 382, which adopts the Governmentwide implementation (2 CFR part 182) of sec. 5152–5158 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701–707).

Subpart E—Violations of This Part and Consequences

§ 382.500 Who in HHS determines that a recipient other than an individual violated the requirements of this part?

The agency head is the official authorized to make the determination under 2 CFR 182.500.

§ 382.505 Who in HHS determines that a recipient who is an individual violated the requirements of this part?

The agency head is the official authorized to make the determination under 2 CFR 182.505.

Subpart F [Reserved]

CHAPTER VI—DEPARTMENT OF STATE

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PART 601—NONPROCUREMENT DEBARMENT AND SUSPENSION

Sec.

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601.20 Does this part apply to me?

601.30 What policies and procedures must I follow?

Subpart A—General

601.137 Who in the Department of State may grant an exception to let an excluded person participate in a covered transaction?

Subpart B—Covered Transactions

601.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

Subpart C—Responsibilities of Participants Regarding Transactions

601.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

601.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

Subparts E–H [Reserved]

Subpart I—Definitions

601.930 Debarring Official (Department of State supplement to government-wide definition at 2 CFR 180.930).

601.1010 Suspending Official (Department of State supplement to government-wide definition at 2 CFR 180.1010).

Subpart J [Reserved]

AUTHORITY: Sec. 2455, Pub. L. 103–355, 108; Stat. 3327 (31 U.S.C. 6101 note); E.O. 12549; (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3); CFR, 1989 Comp., p. 235).

SOURCE: 72 FR 10034, Mar. 7, 2007, unless otherwise noted.

§ 601.10 What does this part do?

This part adopts the Office of Management and Budget (OMB) guidance in subparts A through I of 2 CFR part 180, as supplemented by this part, as the DOS policies and procedures for nonprocurement debarment and suspension. It thereby gives regulatory effect

for DOS to the OMB guidance as supplemented by this part. This part satisfies the requirements in section 3 of Executive Order 12549, “Debarment and Suspension” (3 CFR 1986 Comp., p. 189); Executive Order 12689, “Debarment and Suspension” (3 CFR 1989 Comp., p. 235); and section 2455 of the Federal Acquisition Streamlining Act of 1994, Pub. L. 103–355 (31 U.S.C. 6101 note).

§ 601.20 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in subparts A through I of 2 CFR part 180 (see table at 2 CFR 180.100(b)) apply to you if you are a—

(a) Participant or principal in a “covered transaction” (see subpart B of 2 CFR part 180 and the definition of “nonprocurement transaction” at 2 CFR 180.970);

(b) Respondent in a DOS suspension or debarment action;

(c) DOS debarment or suspension official; and

(d) DOS grants officer, agreements officer, or other official authorized to enter into any type of nonprocurement transaction that is a covered transaction.

§ 601.30 What policies and procedures must I follow?

The DOS policies and procedures that you must follow are the policies and procedures specified in each applicable section of the OMB guidance in subparts A through I of 2 CFR part 180 and any supplemental policies and procedures set forth in this part.

Subpart A—General

§ 601.137 Who in the Department of State may grant an exception to let an excluded person participate in a covered transaction?

The Procurement Executive, Office of the Procurement Executive, DOS, may grant an exception permitting an excluded person to participate in a particular covered transaction. If the Procurement Executive, Office of the Procurement Executive, DOS, grants an exception, the exception must be in writing and state the reason(s) for deviating from the government-wide policy in Executive Order 12549.

Subpart B—Covered Transactions

§ 601.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

In addition to the contracts covered under 2 CFR 180.220(b) of the OMB guidance, this part applies to any contract, regardless of tier, that is awarded by a contractor, subcontractor, supplier, consultant, or its agent or representative in any transaction, if the contract is to be funded or provided by the DOS under a covered nonprocurement transaction and the amount of the contract is expected to equal or exceed \$25,000. This extends the coverage of the DOS nonprocurement suspension and debarment requirements to all lower tiers of subcontracts under covered nonprocurement transactions, as permitted under the OMB guidance at 2 CFR 180.220(c) (see optional lower tier coverage in the figure in the appendix to 2 CFR part 180).

Subpart C—Responsibilities of Participants Regarding Transactions

§ 601.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

You, as a participant, must include a term or condition in lower-tier transactions requiring lower-tier participants to comply with subpart C of the OMB guidance in 2 CFR part 180, as supplemented by this subpart.

Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

§ 601.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

To communicate to a participant the requirements described in 2 CFR 180.435 of the OMB guidance, you must include a term or condition in the transaction that requires the participant's compliance with subpart C of 2 CFR part 180, as supplemented by subpart C of this part, and requires the participant to include a similar term or condition in lower-tier covered transactions.

Subparts E–H [Reserved]

Subpart I—Definitions

§ 601.930 Debarring Official (Department of State supplement to government-wide definition at 2 CFR 180.930).

The Debarring Official for the Department of State is the Procurement Executive, Office of the Procurement Executive (A/OPE).

§ 601.1010 Suspending Official (Department of Energy supplement to government-wide definition at 2 CFR 180.1010).

The Debarring Official for the Department of State is the Procurement Executive, Office of the Procurement Executive (A/OPE).

Subpart J [Reserved]

CHAPTER VIII—DEPARTMENT OF VETERANS
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PART 801—NONPROCUREMENT DEBARMENT AND SUSPENSION

Sec.

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801.20 Does this part apply to me?

801.30 What policies and procedures must I follow?

Subpart A—General

801.137 Who in the Department of Veterans Affairs may grant an exception to allow an excluded person to participate in a covered transaction?

Subpart B—Covered Transactions

801.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

Subpart C—Responsibilities of Participants Regarding Transactions

801.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

801.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

Subparts E–H [Reserved]

Subpart I—Definitions

801.930 Debarring official (Department of Veterans Affairs supplement to government-wide definition at 2 CFR 180.930).

801.995 Principal (Department of Veterans Affairs supplement to government-wide definition at 2 CFR 180.995).

801.1010 Suspending official (Department of Veterans Affairs supplement to government-wide definition at 2 CFR 180.1010).

Subpart J—Limited Denial of Participation (Department of Veterans Affairs Op- tional Subpart for OMB Guidance at 2 CFR Part 180).

801.1100 General.

801.1105 Cause for a limited denial of participation.

801.1110 Scope and period of a limited denial of participation.

801.1111 Notice.

801.1112 Conference.

801.1113 Appeal.

AUTHORITY: Sec. 2455, Pub. L. 103-355, 108 Stat. 3327; E.O. 12549, 3 CFR, 1986 Comp., p.

189; E.O. 12689, 3 CFR, 1989 Comp., p. 235; 38 U.S.C. 501(a) and 3703(c).

SOURCE: 72 FR 30240, May 31, 2007, unless otherwise noted.

§ 801.10 What does this part do?

This part adopts the Office of Management and Budget (OMB) guidance in subparts A through I of 2 CFR part 180, as supplemented by this part, as the Department of Veterans Affairs (VA) policies and procedures for nonprocurement debarment and suspension. It thereby gives regulatory effect for the Department of Veterans Affairs to the OMB guidance as supplemented by this part. This part satisfies the requirements in section 3 of Executive Order 12549, “Debarment and Suspension” (3 CFR 1986 Comp., p. 189), Executive Order 12689, “Debarment and Suspension” (3 CFR 1989 Comp., p. 235) and 31 U.S.C. 6101 note (Section 2455, Pub. L. 103-355, 108 Stat. 3327).

§ 801.20 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in subparts A through I of 2 CFR part 180 (see table at 2 CFR 180.100(b)) apply to you if you are a—

(a) Participant or principal in a “covered transaction” (see Subpart B of 2 CFR part 180 and the definition of “nonprocurement transaction” at 2 CFR 180.970, as supplemented by Subpart B of this part);

(b) Respondent in a Department of Veterans Affairs debarment or suspension action;

(c) Department of Veterans Affairs debarment or suspension official; or

(d) Department of Veterans Affairs grants officer, agreements officer, or other official authorized to enter into any type of nonprocurement transaction that is a covered transaction.

§ 801.30 What policies and procedures must I follow?

For any section of OMB guidance in subparts A through I of 2 CFR part 180 that has no corresponding section in this part, Department of Veterans Affairs policies and procedures are those in the OMB guidance. For any such section where there is a corresponding section in this part, the Department of

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Veterans Affairs policies and procedures that you must follow are the policies and procedures specified in each applicable section of the OMB guidance in subparts A through I of 2 CFR part 180, and as supplemented by the section in this part with the same section number. The contracts that are covered transactions, for example, are specified by § 180.220 of the OMB guidance (2 CFR 180.220) as supplemented by § 801.220 in this part (2 CFR 801.220).

Subpart A—General

§ 801.137 Who in the Department of Veterans Affairs may grant an exception to allow an excluded person to participate in a covered transaction?

Within the Department of Veterans Affairs, the Secretary of Veterans Affairs, the Under Secretary for Health, the Under Secretary for Benefits, and the Under Secretary for Memorial Affairs each has the authority to grant an exception to allow an excluded person to participate in a covered transaction, as provided in the OMB guidance at 2 CFR 180.135.

Subpart B—Covered Transactions

§ 801.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

VA does not extend coverage of non-procurement suspension and debarment requirements beyond first-tier procurement contracts under a covered non-procurement transaction, although the OMB guidance at 2 CFR 180.220(c) allows a Federal agency to do so (also see optional lower tier coverage in the figure in the appendix to 2 CFR part 180).

Subpart C—Responsibilities of Participants Regarding Transactions

§ 801.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

You as a participant must include a term or condition in lower-tier transactions requiring lower-tier participants to comply with subpart C of the

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OMB guidance in 2 CFR part 180, as supplemented by this subpart.

Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

§ 801.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

To communicate to a participant the requirements described in 2 CFR 180.435 of the OMB guidance, you must include a term or condition in the transaction that requires the participant's compliance with subpart C of 2 CFR part 180 (as supplemented by subpart C of this part) and requires the participant to include a similar term or condition in lower-tier covered transactions.

Subparts E–H [Reserved]

Subpart I—Definitions

§ 801.930 Debarring official (Department of Veterans Affairs supplement to government-wide definition at 2 CFR 180.930).

In addition to the debarring official listed at 2 CFR 180.930, the debarring official for the Department of Veterans Affairs is:

- (a) For the Veterans Health Administration, the Under Secretary for Health;
- (b) For the Veterans Benefits Administration, the Under Secretary for Benefits; and
- (c) For the National Cemetery Administration, the Under Secretary for Memorial Affairs.

§ 801.995 Principal (Department of Veterans Affairs supplement to government-wide definition at 2 CFR 180.995.)

In addition to the principals identified at 2 CFR 180.995, for the Department of Veterans Affairs loan guaranty program, principals include, but are not limited to the following:

- (a) Loan officers.
- (b) Loan solicitors.
- (c) Loan processors.
- (d) Loan servicers.
- (e) Loan supervisors.
- (f) Mortgage brokers.

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- (g) Office managers.
- (h) Staff appraisers and inspectors.
- (i) Fee Appraisers and inspectors.
- (j) Underwriters.
- (k) Bonding companies.
- (l) Real estate agents and brokers.
- (m) Management and marketing agents.
- (n) Accountants, consultants, investment bankers, architects, engineers, attorneys, and others in a business relationship with participants in connection with a covered transaction under the Department of Veterans Affairs loan guaranty program.
- (o) Contractors involved in the construction, improvement or repair of properties financed with Department of Veterans Affairs guaranteed loans.
- (p) Closing agents.

§ 801.1010 Suspending official (Department of Veterans Affairs supplement to government-wide definition at 2 CFR 180.1010).

In addition to the suspending official listed at 2 CFR 180.1010, the suspending official for the Department of Veterans Affairs is:

- (a) For the Veterans Health Administration, the Under Secretary for Health;
- (b) For the Veterans Benefits Administration, the Under Secretary for Benefits; and
- (c) For the National Cemetery Administration, the Under Secretary for Memorial Affairs.

Subpart J—Limited Denial of Participation (Department of Veterans Affairs Optional Subpart for OMB Guidance at 2 CFR Part 180).

§ 801.1100 General.

Field facility directors are authorized to order a limited denial of participation affecting any participant or contractor and its affiliates except lenders and manufactured home manufacturers. In each case, even if the offense or violation is of a criminal, fraudulent or other serious nature, the decision to order a limited denial of participation shall be discretionary and in the best interests of the Government.

§ 801.1105 Cause for a limited denial of participation.

(a) *Causes.* A limited denial of participation shall be based upon adequate evidence of any of the following causes:

- (1) Irregularities in a participant's or contractor's performance in the VA loan guaranty program;
- (2) Denial of participation in programs administered by the Department of Housing and Urban Development or the Department of Agriculture, Rural Housing Service;
- (3) Failure to satisfy contractual obligations or to proceed in accordance with contract specifications;
- (4) Failure to proceed in accordance with VA requirements or to comply with VA regulations;
- (5) Construction deficiencies deemed by VA to be the participant's responsibility;
- (6) Falsely certifying in connection with any VA program, whether or not the certification was made directly to VA;
- (7) Commission of an offense or other cause listed in § 180.800;
- (8) Violation of any law, regulation, or procedure relating to the application for guaranty, or to the performance of the obligations incurred pursuant to a commitment to guaranty;
- (9) Making or procuring to be made any false statement for the purpose of influencing in any way an action of the Department.

(10) Imposition of a limited denial of participation by any other VA field facility.

(b) *Indictment.* A criminal indictment or information shall constitute adequate evidence for the purpose of limited denial of participation actions.

(c) *Limited denial of participation.* Imposition of a limited denial of participation by a VA field facility shall, at the discretion of any other VA field facility, constitute adequate evidence for a concurrent limited denial of participation. Where such a concurrent limited denial of participation is imposed, participation may be restricted on the same basis without the need for an additional conference or further hearing.

§ 801.1110 Scope and period of a limited denial of participation.

(a) *Scope and period.* The scope of a limited denial of participation shall be as follows:

(1) A limited denial of participation extends only to participation in the VA Loan Guaranty Program and shall be effective only within the geographic jurisdiction of the office or offices imposing it.

(2) The sanction may be imposed for a period not to exceed 12 months except for unresolved construction deficiencies. In cases involving construction deficiencies, the builder may be excluded for either a period not to exceed 12 months or for an indeterminate period which ends when the deficiency has been corrected or otherwise resolved in a manner acceptable to VA.

(b) *Effectiveness.* The sanction shall be effective immediately upon issuance and shall remain effective for the prescribed period. If the cause for the limited denial of participation is resolved before the expiration of the prescribed period, the official who imposed the sanction may terminate it. The imposition of a limited denial of participation shall not affect the right of the Department to suspend or debar any person under this part.

(c) *Affiliates.* An affiliate or organizational element may be included in a limited denial of participation solely on the basis of its affiliation, and regardless of its knowledge of or participation in the acts providing cause for the sanction. The burden of proving that a particular affiliate or organizational element is capable of meeting VA requirements and is currently a responsible entity and not controlled by the primary sanctioned party (or by an entity that itself is controlled by the primary sanctioned party) is on the affiliate or organizational element.

§ 801.1111 Notice.

(a) *Generally.* A limited denial of participation shall be initiated by advising a participant or contractor, and any specifically named affiliate, by certified mail, return receipt requested:

(1) That the sanction is effective as of the date of the notice;

(2) Of the reasons for the sanction in terms sufficient to put the participant or contractor on notice of the conduct or transaction(s) upon which it is based;

(3) Of the cause(s) relied upon under § 801.1105 for imposing the sanction;

(4) Of the right to request in writing, within 30 days of receipt of the notice, a conference on the sanction, and the right to have such conference held within 10 business days of receipt of the request;

(5) Of the potential effect of the sanction and the impact on the participant's or contractor's participation in Departmental programs, specifying the program(s) involved and the geographical area affected by the action.

(b) *Notification of action.* After 30 days, if no conference has been requested, the official imposing the limited denial of participation will notify VA Central Office of the action taken and of the fact that no conference has been requested. If a conference is requested within the 30-day period, VA Central Office need not be notified unless a decision to affirm all or a portion of the remaining period of exclusion is issued. VA Central Office will notify all VA field offices of sanctions imposed and still in effect under this subpart.

§ 801.1112 Conference.

Upon receipt of a request for a conference, the official imposing the sanction shall arrange such a conference with the participant or contractor and may designate another official to conduct the conference. The participant shall be given the opportunity to be heard within 10 business days of receipt of the request. This conference precedes, and is in addition to, the formal hearing provided if an appeal is taken under § 801.1113. Although formal rules of procedure do not apply to the conference, the participant or contractor may be represented by counsel and may present all relevant information and materials to the official or designee. After consideration of the information and materials presented, the official shall, in writing, advise the participant or contractor of the decision to withdraw, modify or affirm the limited denial of participation. If the decision is made to affirm all or a portion

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of the remaining period of exclusion, the participant shall be advised of the right to request a formal hearing in writing within 30 days of receipt of the notice of decision. This decision shall be issued promptly, but in no event later than 20 days after the conference and receipt of materials.

§ 801.1113 Appeal.

Where the decision is made to affirm all or a portion of the remaining period of exclusion, any participant desiring an appeal shall file a written request for a hearing with the Under Secretary

for Benefits, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. This request shall be filed within 30 days of receipt of the decision to affirm. If a hearing is requested, it shall be held in accordance with the procedures in §§108.825 through 108.855. Where a limited denial of participation is followed by a suspension or debarment, the limited denial of participation shall be superseded and the appeal shall be heard solely as an appeal of the suspension or debarment.

CHAPTER IX—DEPARTMENT OF ENERGY

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PART 901—NONPROCUREMENT DEBARMENT AND SUSPENSION

Sec.

901.10 What does this part do?

901.20 Does this part apply to me?

901.30 What policies and procedures must I follow?

Subpart A—General

901.137 Who in the Department of Energy may grant an exception to let an excluded person participate in a covered transaction?

Subpart B—Covered Transactions

901.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

Subpart C—Responsibilities of Participants Regarding Transactions

901.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

901.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

Subparts E–H [Reserved]

Subpart I—Definitions

901.930 Debarring official (Department of Energy supplement to government-wide definition at 2 CFR 180.935).

901.950 Federal agency (Department of Energy supplement to government-wide definition at 2 CFR 180.910).

901.1010 Suspending official (Department of Energy supplement to government-wide definition at 2 CFR 180.1010).

Subpart J [Reserved]

AUTHORITY: Sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235); 42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*

SOURCE: 71 FR 70459, Dec. 5, 2006, unless otherwise noted.

§ 901.10 What does this part do?

This part adopts the Office of Management and Budget (OMB) guidance in subparts A through I of 2 CFR part 180, as supplemented by this part, as the DOE policies and procedures for nonprocurement debarment and suspension. It thereby gives regulatory effect for DOE to the OMB guidance as supplemented by this part. This part satisfies the requirements in section 3 of Executive Order 12549, “Debarment and Suspension” (3 CFR 1986 Comp., p. 189); Executive Order 12689, “Debarment and Suspension” (3 CFR 1989 Comp., p. 235); and section 2455 of the Federal Acquisition Streamlining Act of 1994, Pub. L. 103–355 (31 U.S.C. 6101 note).

§ 901.20 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in subparts A through I of 2 CFR part 180 (see table at 2 CFR 180.100(b)) apply to you if you are a—

(a) Participant or principal in a “covered transaction” (see subpart B of 2 CFR part 180 and the definition of “nonprocurement transaction” at 2 CFR 180.970);

(b) Respondent in a DOE suspension or debarment action;

(c) DOE debarment or suspension official; and

(d) DOE grants officer, agreements officer, or other official authorized to enter into any type of nonprocurement transaction that is a covered transaction.

§ 901.30 What policies and procedures must I follow?

The DOE policies and procedures that you must follow are the policies and procedures specified in each applicable section of the OMB guidance in subparts A through I of 2 CFR part 180 and any supplemental policies and procedures set forth in this part.

Subpart A—General**§ 901.137 Who in the Department of Energy may grant an exception to let an excluded person participate in a covered transaction?**

The Director, Office of Procurement and Assistance Management, DOE, for DOE actions, and the Director, Office of Acquisition and Supply Management, NNSA, for NNSA actions, may grant an exception permitting an excluded person to participate in a particular covered transaction. If the Director, Office of Procurement and Assistance Management, DOE, for DOE actions, and Director, Office of Acquisition and Supply Management, NNSA, for NNSA actions, grants an exception, the exception must be in writing and state the reason(s) for deviating from the government-wide policy in Executive Order 12549.

Subpart B—Covered Transactions**§ 901.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?**

Although the OMB guidance at 2 CFR 180.220(c) allows a Federal agency to do so (also see optional lower tier coverage in the figure in the appendix to 2 CFR part 180), DOE does not extend coverage of nonprocurement suspension and debarment requirements beyond first-tier procurement contracts under a covered nonprocurement transaction.

Subpart C—Responsibilities of Participants Regarding Transactions**§ 901.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?**

You, as a participant, must include a term or condition in lower-tier transactions requiring lower-tier participants to comply with subpart C of the OMB guidance in 2 CFR part 180, as supplemented by this subpart.

Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions**§ 901.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?**

To communicate to a participant the requirements described in 2 CFR 180.435 of the OMB guidance, you must include a term or condition in the transaction that requires the participant's compliance with subpart C of 2 CFR part 180, as supplemented by subpart C of this part, and requires the participant to include a similar term or condition in lower-tier covered transactions.

Subparts E–H [Reserved]**Subpart I—Definitions****§ 901.930 Debarring official (Department of Energy supplement to government-wide definition at 2 CFR 180.930).**

The Debarring Official for the Department of Energy, exclusive of NNSA, is the Director, Office of Procurement and Assistance Management, DOE. The Debarring Official for NNSA is the Director, Office of Acquisition and Supply Management, NNSA.

§ 901.950 Federal agency (Department of Energy supplement to government-wide definition at 2 CFR 180.950).

DOE means the U.S. Department of Energy, including the NNSA.

NNSA means the National Nuclear Security Administration.

§ 901.1010 Suspending official (Department of Energy supplement to government-wide definition at 2 CFR 180.1010).

The suspending official for the Department of Energy, exclusive of NNSA, is the Director, Office of Procurement and Assistance Management, DOE. The suspending official for NNSA is the Director, Office of Acquisition and Supply Management, NNSA.

Subpart J [Reserved]

CHAPTER XI—DEPARTMENT OF DEFENSE

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PART 1125—NONPROCUREMENT DEBARMENT AND SUSPENSION

Sec.

1125.10 What does this part do?

1125.20 Does this part implement the OMB guidance in 2 CFR part 180 for all DoD nonprocurement transactions?

1125.30 Does this part apply to me?

1125.40 What policies and procedures must I follow?

Subpart A—General

1125.137 Who in the Department of Defense may grant an exception to let an excluded person participate in a covered transaction?

Subpart B—Covered Transactions

1125.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

Subpart C—Responsibilities of Participants Regarding Transactions

1125.332 What method must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

Subpart D—Responsibilities of DoD Officials Regarding Transactions

1125.425 When do I check to see if a person is excluded or disqualified?

1125.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

Subparts E–H [Reserved]

Subpart I—Definitions

1125.930 Debarment official (DoD supplement to Governmentwide definition at 2 CFR 180.930).

1125.937 DoD Component.

1125.1010 Suspending official (DoD supplement to Governmentwide definition at 2 CFR 180.1010).

AUTHORITY: Sec. 2455, Pub. L. 103-355, 108 Stat. 3327; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235; 5 U.S.C. 301 and 10 U.S.C. 113.

SOURCE: 72 FR 34984, June 26, 2007, unless otherwise noted.

§ 1125.10 What does this part do?

This part adopts the Office of Management and Budget (OMB) guidance in subparts A through I of 2 CFR part 180, as supplemented by this part, as the

Department of Defense (DoD) policies and procedures for nonprocurement debarment and suspension. It thereby gives regulatory effect for the Department of Defense to the OMB guidance as supplemented by this part. This part satisfies the requirements in section 3 of Executive Order 12549, “Debarment and Suspension” (3 CFR 1986 Comp., p. 189), Executive Order 12689, “Debarment and Suspension” (3 CFR 1989 Comp., p. 235) and 31 U.S.C. 6101 note (Section 2455, Public Law 103-355, 108 Stat. 3327).

§ 1125.20 Does this part implement the OMB guidance in 2 CFR part 180 for all DoD nonprocurement transactions?

This part implements the OMB guidelines in 2 CFR part 180 for most DoD nonprocurement transactions. However, it does not implement the guidelines as they apply to prototype projects under the authority of Section 845 of the National Defense Authorization Act for Fiscal Year 1994 (Pub. L. 103-160), as amended. The Director of Defense Procurement and Acquisition Policy maintains a DoD issuance separate from this part that addresses section 845 transactions.

§ 1125.30 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in subparts A through I of 2 CFR part 180 (see table at 2 CFR 180.100(b)) apply to you if you are a—

(a) Participant or principal in a “covered transaction” (see subpart B of 2 CFR part 180 and the definition of “nonprocurement transaction” at 2 CFR 180.970, as supplemented by subpart B of this part), other than a section 845 transaction described in § 1125.20;

(b) Respondent in a DoD Component’s nonprocurement suspension or debarment action;

(c) DoD Component’s debarment or suspension official; or

(d) DoD Component’s grants officer, agreements officer, or other official authorized to enter into a nonprocurement transaction that is a covered transaction.

§ 1125.40

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§ 1125.40 What policies and procedures must I follow?

(a) *General.* You must follow the policies and procedures specified in applicable sections of the OMB guidance in subparts A through I of 2 CFR part 180, as implemented by this part.

(b) *Specific sections of OMB guidance that this part supplements.* In implementing the OMB guidance in 2 CFR part 180, this part supplements eight sections of the guidance, as shown in the following table. For each of those sections, you must follow the policies and procedures in the OMB guidance, as supplemented by this part.

Section of OMB guidance	Section in this part where supplemented	What the supplementation clarifies
(1) 2 CFR 180.135	§ 1125.137	Who in DoD may grant an exception for an excluded person to participate in a covered transaction.
(2) 2 CFR 180.220	§ 1125.220	Which lower-tier contracts under a nonprocurement transaction are covered transactions.
(3) 2 CFR 180.330	§ 1125.332	What method a participant must use to communicate requirements to a lower-tier participant.
(4) 2 CFR 180.425	§ 1125.425	When a DoD awarding official must check to see if a person is excluded or disqualified.
(5) 2 CFR 180.435	§ 1125.437	What method a DoD official must use to communicate requirements to a participant.
(6) 2 CFR 180.930	§ 1125.930	Which DoD officials are debarring officials.
(7) 2 CFR 180.1010	§ 1125.1010	Which DoD officials are suspending officials.

(c) *Sections of the OMB guidance that this part does not supplement.* For any section of OMB guidance in subparts A through I of 2 CFR 180 that is not listed in paragraph (b) of this section, DoD policies and procedures are the same as those in the OMB guidance.

Subpart A—General

§ 1125.137 Who in the Department of Defense may grant an exception to let an excluded person participate in a covered transaction?

Within the Department of Defense, the Secretary of Defense, Secretary of a Military Department, Head of a Defense Agency, Head of the Office of Economic Adjustment, and Head of the Special Operations Command have the authority to grant an exception to let an excluded person participate in a covered transaction, as provided in the OMB guidance at 2 CFR 180.135.

Subpart B—Covered Transactions

§ 1125.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

Although the OMB guidance at 2 CFR 180.220(c) allows a Federal agency to do so (also see optional lower tier coverage in the figure in the appendix to 2

CFR part 180), the Department of Defense does not extend coverage of nonprocurement suspension and debarment requirements beyond first-tier procurement contracts under a covered nonprocurement transaction.

Subpart C—Responsibilities of Participants Regarding Transactions

§ 1125.332 What method must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

You as a participant in a covered transaction must include a term or condition in any lower-tier covered transaction into which you enter, to require the participant of that transaction to—

(a) Comply with subpart C of the OMB guidance in 2 CFR part 180; and

(b) Include a similar term or condition in any covered transaction into which it enters at the next lower tier.

Subpart D—Responsibilities of DoD Officials Regarding Transactions

§ 1125.425 When do I check to see if a person is excluded or disqualified?

In addition to the four instances identified in the OMB guidance at 2

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§ 1125.1010

CFR 180.425, you as a DoD Component official must check to see if a person is excluded or disqualified before you obligate additional funding (*e.g.*, through an incremental funding action) for a pre-existing grant or cooperative agreement with an institution of higher education, as provided in 32 CFR 22.520(e)(5).

§ 1125.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

You as a DoD Component official must include a term or condition in each covered transaction into which you enter, to communicate to the participant the requirements to—

(a) Comply with subpart C of 2 CFR part 180, as supplemented by subpart C of this part; and

(b) Include a similar term or condition in any lower-tier covered transactions into which the participant enters.

Subparts E–H [Reserved]

Subpart I—Definitions

§ 1125.930 Debarring official (DoD supplement to Governmentwide definition at 2 CFR 180.930).

DoD Components' debarring officials for nonprocurement transactions are the same officials identified in 48 CFR part 209, subpart 209.4, as debarring officials for procurement contracts.

§ 1125.937 DoD Component.

In this part, DoD Component means the Office of the Secretary of Defense, a Military Department, a Defense Agency, a DoD Field Activity, or any other organizational entity of the Department of Defense that is authorized to award or administer grants, cooperative agreements, or other nonprocurement transactions.

§ 1125.1010 Suspending official (DoD supplement to Governmentwide definition at 2 CFR 180.1010).

DoD Components' suspending officials for nonprocurement transactions are the same officials identified in 48 CFR part 209, subpart 209.4, as suspending officials for procurement contracts.

CHAPTER XII—DEPARTMENT OF TRANSPORTATION

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PART 1200—NONPROCUREMENT SUSPENSION AND DEBARMENT

Sec.

1200.10 What does this part do?

1200.20 Does this part apply to me?

1200.30 What policies and procedures must I follow?

Subpart A—General

1200.137 Who in the Department of Transportation may grant an exception to let an excluded person participate in a covered transaction?

Subpart B—Covered Transactions

1200.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

Subpart C—Responsibilities of Participants Regarding Transactions

1200.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

1200.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

Subparts E–J [Reserved]

AUTHORITY: 49 U.S.C. 322; Sec. 2455, Public Law 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235).

SOURCE: 73 FR 24140, May 2, 2008, unless otherwise noted.

§ 1200.10 What does this part do?

This part adopts the Office of Management and Budget (OMB) guidance in subparts A through I of 2 CFR part 180, as supplemented by this part, as the Department of Transportation policies and procedures for nonprocurement suspension and debarment. It thereby gives regulatory effect for the Department of Transportation to the OMB guidance as supplemented by this part. This part satisfies the requirements in section 3 of Executive Order 12549, “Suspension and Debarment” (3 CFR 1986 Comp., p. 189), Executive Order 12689, “Suspension and Debarment” (3

CFR 1989 Comp., p. 235) and 31 U.S.C. 6101 note (Section 2455, Public Law 103–355, 108 Stat. 3327).

§ 1200.20 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in subparts A through I of 2 CFR part 180 (see table at 2 CFR 180.100(b)) apply to you if you are a—

(a) Participant or principal in a “covered transaction” (see subpart B of 2 CFR part 180 and the definition of “nonprocurement transaction” at 2 CFR 180.970;

(b) Respondent in a Department of Transportation suspension or debarment action;

(c) Department of Transportation debarment or suspension official;

(d) Department of Transportation grants officer, agreements officer, or other official authorized to enter into any type of nonprocurement transaction that is a covered transaction.

§ 1200.30 What policies and procedures must I follow?

The Department of Transportation policies and procedures that you must follow are the policies and procedures specified in each applicable section of the OMB guidance in subparts A through I of 2 CFR part 180, as that section is supplemented by the section in this part with the same section number. The contracts that are covered transactions, for example, are specified by section 220 of the OMB guidance (i.e., 2 CFR 180.220), as supplemented by section 220 in this part (i.e., § 1200.220). For any section of OMB guidance in subparts A through I of 2 CFR 180 that has no corresponding section in this part, Department of Transportation policies and procedures are those in the OMB guidance.

Subpart A—General

§ 1200.137 Who in the Department of Transportation may grant an exception to let an excluded person participate in a covered transaction?

Within the Department of Transportation, Office of the Secretary, the Secretary or an official designated by the

§ 1200.220

Secretary may grant an exception permitting an excluded person to participate in a particular covered transaction. Within an Operating Administration of the Department of Transportation, the head of the operating administration may grant an exception permitting an excluded person to participate in a particular covered transaction. The head of an operating administration may delegate this function and authorize successive delegations.

Subpart B—Covered Transactions

§ 1200.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

In addition to the contracts covered under 2 CFR 180.220(b) of the OMB guidance, this part applies to any contract, regardless of tier, that is awarded by a contractor, subcontractor, supplier, consultant, or its agent or representative in any transaction, if the contract is to be funded or provided by the Department of Transportation under a covered nonprocurement transaction and the amount of the contract is expected to equal or exceed \$25,000. This extends the coverage of the Department of Transportation nonprocurement suspension and debarment requirements to all lower tiers of subcontracts under covered nonprocurement transactions, as permitted under the OMB guidance at 2 CFR 180.220(c)

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(see optional lower-tier coverage in the figure in the appendix to 2 CFR part 180).

Subpart C—Responsibilities of Participants Regarding Transactions

§ 1200.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

You as a participant must include a term or condition in lower-tier transactions requiring lower-tier participants to comply with subpart C of the OMB guidance in 2 CFR part 180, as supplemented by this subpart.

Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

§ 1200.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

To communicate to a participant the requirements described in 2 CFR 180.435 of the OMB guidance, you must include a term or condition in the transaction that requires the participant's compliance with subpart C of 2 CFR part 180 and requires the participant to include a similar term or condition in lower-tier covered transactions.

Subparts E–J [Reserved]

CHAPTER XIII—DEPARTMENT OF COMMERCE

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PART 1326—NONPROCUREMENT DEBARMENT AND SUSPENSION

Sec.

1326.10 What does this part do?

1326.20 Does this part apply to me?

1326.30 What policies and procedures must I follow?

Subpart A—General

1326.137 Who in the Department of Commerce may grant an exception to let an excluded person participate in a covered transaction?

Subpart B—Covered Transactions

1326.215 Which nonprocurement transactions, in addition to those listed in 2 CFR 180.215, are not covered transactions?

1326.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

Subpart C—Responsibilities of Participants Regarding Transactions

1326.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

1326.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

Subparts E–H [Reserved]

Subpart I—Definitions

1326.970 Nonprocurement transaction (Department of Commerce supplement to government-wide definition at 2 CFR 180.970).

Subpart J [Reserved]

AUTHORITY: 5 U.S.C. 301; Sec. 2455, Pub. L. 103–355, 108 Stat. 3327; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235.

SOURCE: 71 FR 76574, Dec. 21, 2006, unless otherwise noted.

§ 1326.10 What does this part do?

This part adopts the Office of Management and Budget (OMB) guidance in subparts A through I of 2 CFR part 180, as supplemented by this part, as the

Department of Commerce policies and procedures for nonprocurement debarment and suspension. It thereby gives regulatory effect to the OMB guidance as supplemented by this part. This part satisfies the requirements in section 3 of Executive Order 12549, “Debarment and Suspension” (3 CFR 1986 Comp., p. 189), Executive Order 12689, “Debarment and Suspension” (3 CFR 1989 Comp., p. 235) and 31 U.S.C. 6101 note (Section 2455, Public Law 103–355, 108 Stat. 3327).

§ 1326.20 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in subparts A through I of 2 CFR part 180 (see table at 2 CFR 180.100(b)) apply to you if you are a—

(a) Participant or principal in a “covered transaction” (see subpart B of 2 CFR part 180 and the definition of “nonprocurement transaction” at 2 CFR 180.970, as supplemented by subpart B and § 1326.970 of this part).

(b) Respondent in a Department of Commerce suspension or debarment action.

(c) Department of Commerce debarment or suspension official;

(d) Department of Commerce grants officer, agreements officer, or other official authorized to enter into any type of nonprocurement transaction that is a covered transaction;

§ 1326.30 What policies and procedures must I follow?

The Department of Commerce policies and procedures that you must follow are the policies and procedures specified in each applicable section of the OMB guidance in subparts A through I of 2 CFR part 180, as that section is supplemented by the section in this part with the same section number. The contracts that are covered transactions, for example, are specified by section 220 of the OMB guidance (*i.e.*, 2 CFR 180.220) as supplemented by section 220 in this part (*i.e.*, § 1326.220). For any section of OMB guidance in subparts A through I of 2 CFR part 180 that has no corresponding section in this part, Department of Commerce policies and procedures are those in the OMB guidance.

Subpart A—General

§ 1326.137 Who in the Department of Commerce may grant an exception to let an excluded person participate in a covered transaction?

Within the Department of Commerce, the Secretary of Commerce or designee has the authority to grant an exception to let an excluded person participate in a covered transaction, as provided in the OMB guidance at 2 CFR 180.135.

Subpart B—Covered Transactions

§ 1326.215 Which nonprocurement transactions, in addition to those listed in 2 CFR 180.215, are not covered transactions?

(a) For purposes of the Department of Commerce, a transaction that the Department needs to respond to a national or agency-recognized emergency or disaster includes the Fisherman's Contingency Fund.

(b) For purposes of the Department of Commerce, an incidental benefit that results from ordinary governmental operations includes:

- (1) Export Promotion, Trade Information and Counseling, and Trade policy.
- (2) Geodetic Surveys and Services (Specialized Services).
- (3) Fishery Products Inspection Certification.
- (4) Standard Reference Materials.
- (5) Calibration, Measurement, and Testing.
- (6) Critically Evaluated Data (Standard Reference Data).
- (7) Phoenix Data System.
- (8) The sale or provision of products, information, and services to the general public.

(c) For purposes of the Department of Commerce, any other transaction if the application of an exclusion to the transaction is prohibited by law includes:

- (1) The Administration of the Anti-dumping and Countervailing Duty Statutes.
- (2) The export Trading Company Act Certification of Review Program.
- (3) Trade Adjustment Assistance Program Certification.
- (4) Foreign Trade Zones Act of 1934, as amended.
- (5) Statutory Import Program.

§ 1326.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

In addition to the contracts covered under 2 CFR 180.220(b) of the OMB guidance, this part applies to a subcontract that is awarded by a participant in a procurement transaction covered under 2 CFR 180.220(a), if the amount of the subcontract exceeds or is expected to exceed \$25,000. This extends the coverage of the Department of Commerce nonprocurement suspension and debarment requirements to one additional tier of contracts under covered nonprocurement transactions, as permitted under the OMB guidance at 2 CFR 180.220(c) (see optional lower tier coverage in the figure in the appendix to 2 CFR part 180).

Subpart C—Responsibilities of Participants Regarding Transactions

§ 1326.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

You as a participant must include a term or condition in lower-tier transactions requiring lower-tier participants to comply with subpart C of the OMB guidance in 2 CFR part 180, as supplemented by this subpart.

Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

§ 1326.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

To communicate to a participant the requirements described in 2 CFR 180.435 of the OMB guidance, you must include a term or condition in the transaction that requires the participant's compliance with subpart C of 2 CFR part 180, as supplemented by subpart C of this part, and requires the participant to include a similar term or condition in lower-tier covered transactions.

Subparts E–H [Reserved]

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Subpart I—Definitions

§ 1326.970 Nonprocurement transaction (Department of Commerce supplement to government-wide definition at 2 CFR 180.970).

For purposes of the Department of Commerce, nonprocurement transaction includes the following:

(a) Joint project Agreements under 15 U.S.C. 1525.

(b) Cooperative research and development agreements.

(c) Joint statistical agreements.

(d) Patent licenses under 35 U.S.C. 207.

(e) NTIS joint ventures, 15 U.S.C. 3704b.

Subpart J [Reserved]

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PART 1400—NONPROCUREMENT DEBARMENT AND SUSPENSION

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AUTHORITY: E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235); sec. 2455 Pub. L. 103-355, 108 Stat. 3327 (31 U.S.C. 6101 note); 5 U.S.C. 301.

SOURCE: 72 FR 33384, June 18, 2007, unless otherwise noted.

§ 1400.10 What does this part do?

This part adopts the Office of Management and Budget (OMB) guidance in

subparts A through I of 2 CFR part 180, as supplemented by this part, as the Department of the Interior policies and procedures for nonprocurement debarment and suspension. It thereby gives regulatory effect to the OMB guidance as supplemented by this part. This part satisfies the requirements in section 3 of Executive Order 12549, “Debarment and Suspension” (3 CFR 1986 Comp., p. 189), Executive Order 12689, “Debarment and Suspension” (3 CFR 1989 Comp., p. 235) and 31 U.S.C. 6101 note (Section 2455, Pub. L. 103-355, 108 Stat. 3327).

§ 1400.20 When does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in subparts A through I of 2 CFR part 180 (see table at 2 CFR 180.100(b)) apply to you if you are—

(a) Participant or principal in a “covered transaction” (see subpart B of 2 CFR part 180 and the definition of “nonprocurement transaction” at 2 CFR 180.970, as supplemented by subpart B and § 1400.970);

(b) Respondent in a Department of the Interior suspension or debarment action;

(c) Department of the Interior debarment or suspension official, i.e., the Director, Office of Acquisition and Property Management; or

(d) Department of the Interior grants officer, agreements officer, or other official authorized to enter into any type of nonprocurement transaction that is a covered transaction.

§ 1400.30 What policies and procedures must I follow?

(a) The Department of the Interior policies and procedures that you must follow are specified in:

(1) Each applicable section of the OMB guidance in subparts A through I of 2 CFR part 180; and

(2) The supplement to each section of the OMB guidance that is found in this part under the same section number. (The contracts that are covered transactions, for example, are specified by section 220 of the OMB guidance (i.e., 2 CFR 180.220) as supplemented by section 220 in this part (i.e., Sec. 1400.220)).

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(b) For any section of OMB guidance in subparts A through I of 2 CFR part 180 that has no corresponding section in this part, Department of the Interior policies and procedures are those in the OMB guidance.

Subpart A—General

§ 1400.137 Who in the Department of the Interior may grant an exception to let an excluded person participate in a covered transaction?

Within the Department of the Interior, the Director, Office of Acquisition and Property Management has the authority to grant an exception to let an excluded person participate in a covered transaction, as provided in the OMB guidance at 2 CFR 180.135.

Subpart B—Covered Transactions

§ 1400.215 Which nonprocurement transactions, in addition to those listed in 2 CFR 180.215, are not covered transactions?

(a) Transactions entered into pursuant to Public Law 93-638, 88 Stat. 2203.

(b) Under natural resource management programs, permits, licenses, exchanges, and other acquisitions of real property, rights-of-way, and easements.

(c) Transactions concerning mineral patent claims entered into pursuant to 30 U.S.C. 22 *et seq.*; and

(d) Water service contracts and repayments entered into pursuant to 43 U.S.C. 485.

§ 1400.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

Although the OMB guidance at 2 CFR 180.220(c) allows a Federal agency to do so (also see optional lower tier coverage in the figure in the appendix to 2 CFR part 180), the Department of the Interior does not extend coverage of nonprocurement suspension and debarment requirements beyond first-tier procurement contracts under a covered nonprocurement transaction.

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Subpart C—Responsibilities of Participants Regarding Transactions

§ 1400.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

You as a participant must include a term or condition in lower-tier transactions requiring lower-tier participants to comply with subpart C of the OMB guidance in 2 CFR part 180.

Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

§ 1400.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

To communicate to a participant the requirements described in 2 CFR 180.435 of the OMB guidance, you must include a term or condition in the transaction that requires the participant's compliance with subpart C of 2 CFR part 180, as supplemented by subpart C of this part, and requires the participant to include a similar term or condition in lower-tier covered transactions.

Subparts E-H [Reserved]

Subpart I—Definitions

§ 1400.930 Debarring official (Department of the Interior supplement to the definition at 2 CFR 180.930).

The Debarring Official for the Department of the Interior is the Director, Office of Acquisition and Property Management.

§ 1400.970 Nonprocurement transaction (Department of the Interior supplement to the definition at 2 CFR 180.970).

In addition to those listed in 2 CFR 180.970, the Department of the Interior includes the following as nonprocurement transactions:

(a) Federal acquisition of a leasehold interest or any other interest in real property;

(b) Concession contracts;

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(c) Disposition of Federal real and personal property and natural resources; and

(d) Any other nonprocurement transactions between the Department and a person.

§ 1400.1010 Suspending official (Department of the Interior supplement to the definition at 2 CFR 180.930).

The Suspending Official for the Department of the Interior is the Director, Office of Acquisition and Property Management.

Subpart J [Reserved]

CHAPTER XV—ENVIRONMENTAL PROTECTION AGENCY

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PART 1532—NONPROCUREMENT DEBARMENT AND SUSPENSION

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1532.1305 What are the consequences if I mislead the EPA in seeking reinstatement or fail to comply with my administrative agreement?

1532.1400 How may I appeal a decision denying my request for reinstatement?

1532.1500 If I am reinstated, when will my name be removed from the EPLS?

1532.1600 What definitions apply specifically to actions under this subpart?

AUTHORITY: 33 U.S.C. 1251 *et seq.*; 42 U.S.C. 7401 *et seq.*; Sec. 2455, Pub. L. 103-355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 11738 (3 CFR, 1973 Comp., p. 799); E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235).

SOURCE: 72 FR 2422, Jan. 19, 2007, unless otherwise noted.

§ 1532.10 What does this part do?

This part adopts the Office of Management and Budget (OMB) guidance in subparts A through I of 2 CFR part 180, as supplemented by this part, as the Environmental Protection Agency

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(EPA) policies and procedures for non-procurement debarment and suspension. It thereby gives regulatory effect for the EPA to the OMB guidance as supplemented by this part. This part satisfies the requirements in section 3 of Executive Order 12549, “Debarment and Suspension” (3 CFR 1986 Comp., p. 189), Executive Order 12689, “Debarment and Suspension” (3 CFR 1989 Comp., p. 235) and 31 U.S.C. 6101 note (Section 2455, Pub. L. 103-355, 108 Stat. 3327).

§ 1532.20 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in subparts A through I of 2 CFR part 180 (see table at 2 CFR 180.100(b)) apply to you if you are a—

(a) Participant or principal in a “covered transaction” (see subpart B of 2 CFR part 180 and the definition of “nonprocurement transaction” at 2 CFR 180.970;

(b) Respondent in an EPA suspension or debarment action;

(c) EPA debarment or suspension official; or

(d) EPA grants officer, agreements officer, or other official authorized to enter into any type of nonprocurement transaction that is a covered transaction.

§ 1532.30 What policies and procedures must I follow?

The EPA policies and procedures that you must follow are the policies and procedures specified in each applicable section of the OMB guidance in subparts A through I of 2 CFR part 180, as that section is supplemented by the section in this part with the same section number. The contracts that are covered transactions, for example, are specified by section 220 of the OMB guidance (i.e., 2 CFR 180.220) as supplemented by section 220 in this part (i.e., § 1532.220). For any section of OMB guidance in subparts A through I of 2 CFR 180 that has no corresponding section in this part, EPA policies and procedures are those in the OMB guidance.

2 CFR Ch. XV (1–1–10 Edition)

Subpart A—General

§ 1532.137 Who in the EPA may grant an exception to let an excluded person participate in a covered transaction?

The EPA Debarring Official has the authority to grant an exception to let an excluded person participate in a covered transaction, as provided in the OMB guidance at 2 CFR 180.135. If the EPA Debarring Official grants an exception, the exception must be in writing and state the reason(s) for deviating from the governmentwide policy in Executive Order 12549.

Subpart B—Covered Transactions

§ 1532.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

In addition to the contracts covered under 2 CFR 180.220(b) of the OMB guidance, this part applies to any contract, regardless of tier, that is awarded by a contractor, subcontractor, supplier, consultant, or its agent or representative in any transaction, if the contract is to be funded or provided by the EPA under a covered nonprocurement transaction and the amount of the contract is expected to equal or exceed \$25,000. This extends the coverage of the EPA nonprocurement suspension and debarment requirements to all lower tiers of subcontracts under covered nonprocurement transactions, as permitted under the OMB guidance at 2 CFR 180.220(c) (see optional lower tier coverage in the figure in the appendix to 2 CFR part 180).

Subpart C—Responsibilities of Participants Regarding Transactions

§ 1532.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

You as a participant must include a term or condition in lower-tier transactions requiring lower-tier participants to comply with subpart C of the OMB guidance in 2 CFR part 180, as supplemented by this subpart.

Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions**§ 1532.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?**

To communicate to a participant the requirements described in 2 CFR 180.435 of the OMB guidance, you must include a term or condition in the transaction that requires the participant's compliance with subpart C of 2 CFR part 180, as supplemented by subpart C of this part, and requires the participant to include a similar term or condition in lower-tier covered transactions.

Subparts E–F [Reserved]**Subpart G—Suspension****§ 1532.765 How may I appeal my EPA suspension?**

(a) If the EPA suspending official issues a decision under 2 CFR 180.755 to continue your suspension after you present information in opposition to that suspension under 2 CFR 180.720, you can ask for review of the suspending official's decision in two ways:

(1) You may ask the suspending official to reconsider the decision for material errors of fact or law that you believe will change the outcome of the matter; and/or

(2) You may request the Director, Office of Grants and Debarment (OGD Director), to review the suspending official's decision to continue your suspension within 30 days of your receipt of the suspending official's decision under 2 CFR 180.755 or paragraph (a)(1) of this section. However, the OGD Director can reverse the suspending official's decision only where the OGD Director finds that the decision is based on a clear error of material fact or law, or where the OGD Director finds that the suspending official's decision was arbitrary, capricious, or an abuse of discretion.

(b) A request for review under this section must be in writing; state the specific findings you believe to be in error; and include the reasons or legal bases for your position.

(c) A review under paragraph (a)(2) of this section is solely within the discretion of the OGD Director who may also stay the suspension pending review of the suspending official's decision.

(d) The EPA suspending official and the OGD Director must notify you of their decisions under this section, in writing, using the notice procedures at 2 CFR 180.615 and 180.975.

Subpart H—Debarment**§ 1532.890 How may I appeal my EPA debarment?**

(a) If the EPA debarring official issues a decision under 2 CFR 180.870 to debar you after you present information in opposition to a proposed debarment under 2 CFR 180.815, you can ask for review of the debarring official's decision in two ways:

(1) You may ask the debarring official to reconsider the decision for material errors of fact or law that you believe will change the outcome of the matter; and/or

(2) You may request the Director, Office of Grants and Debarment (OGD Director), to review the debarring official's decision to debar you within 30 days of your receipt of the debarring official's decision under 2 CFR 180.870 or paragraph (a)(1) of this section. However, the OGD Director can reverse the debarring official's decision only where the OGD Director finds that the decision is based on a clear error of material fact or law, or where the OGD Director finds that the debarring official's decision was arbitrary, capricious, or an abuse of discretion.

(b) A request for review under this section must be in writing; state the specific findings you believe to be in error; and include the reasons or legal bases for your position.

(c) A review under paragraph (a)(2) of this section is solely within the discretion of the OGD Director who may also stay the debarment pending review of the debarring official's decision.

(d) The EPA debarring official and the OGD Director must notify you of their decisions under this section, in writing, using the notice procedures at 2 CFR 180.615 and 180.975.

Subpart I—Definitions

§ 1532.995 Principal (EPA supplement to government-wide definition at 2 CFR 180.995).

In addition to those listed in 2 CFR 180.995, other examples of individuals who are principals in EPA covered transactions include:

- (a) Principal investigators;
- (b) Technical or management consultants;
- (c) Individuals performing chemical or scientific analysis or oversight;
- (d) Professional service providers such as doctors, lawyers, accountants, engineers, etc.;
- (e) Individuals responsible for the inspection, sale, removal, transportation, storage or disposal of solid or hazardous waste or materials;
- (f) Individuals whose duties require special licenses;
- (g) Individuals that certify, authenticate or authorize billings; and
- (h) Individuals that serve in positions of public trust.

Subpart J—Statutory Disqualification and Reinstatement Under the Clean Air Act and Clean Water Act

§ 1532.1100 What does this subpart do?

This subpart explains how the EPA administers section 306 of the Clean Air Act (CAA) (42 U.S.C. 7606) and section 508 of the Clean Water Act (CWA) (33 U.S.C. 1368), which disqualify persons convicted for certain offenses under those statutes (see § 1532.1105), from eligibility to receive certain contracts, subcontracts, assistance, loans and other benefits (see coverage under the Federal Acquisition Regulation (FAR), 48 CFR part 9, subpart 9.4 and subparts A through I of 2 CFR part 180). It also explains: the procedures for seeking reinstatement of a person's eligibility under the CAA or CWA; the criteria and standards that apply to EPA's decision-making process; and requirements of award officials and others involved in Federal procurement and nonprocurement activities in carrying out their responsibilities under the CAA and CWA.

§ 1532.1105 Does this subpart apply to me?

(a) Portions of this subpart apply to you if you are convicted, or likely to be convicted, of any offense under section 7413(c) of the CAA or section 1319(c) of the CWA.

(b) Portions of this subpart apply to you if you are the EPA debarring official, a Federal procurement or nonprocurement award official, a participant in a Federal procurement or nonprocurement program that is precluded from entering into a covered transaction with a person disqualified under the CAA or CWA, or if you are a Federal department or agency anticipating issuing an exception to a person otherwise disqualified under the CAA or CWA.

§ 1532.1110 How will a CAA or CWA conviction affect my eligibility to participate in Federal contracts, subcontracts, assistance, loans and other benefits?

If you are convicted of any offense described in § 1532.1105, you are automatically disqualified from eligibility to receive any contract, subcontract, assistance, sub-assistance, loan or other nonprocurement benefit or transaction that is prohibited by a Federal department or agency under the Governmentwide debarment and suspension system (i.e. covered transactions under subpart A through I of 2 CFR part 180, or prohibited awards under 48 CFR part 9, subpart 9.4), if you:

- (a) Will perform any part of the transaction or award at the facility giving rise to your conviction (called the violating facility); and
- (b) You own, lease or supervise the violating facility.

§ 1532.1115 Can the EPA extend a CAA or CWA disqualification to other facilities?

The CAA specifically authorizes the EPA to extend a CAA disqualification to other facilities that are owned or operated by the convicted person. The EPA also has authority under subparts A through I of 2 CFR part 180, or under 48 CFR part 9, subpart 9.4, to take discretionary suspension and debarment actions on the basis of misconduct leading to a CAA or CWA conviction,

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or for activities that the EPA debarring official believes were designed to improperly circumvent a CAA or CWA disqualification.

§ 1532.1120 What is the purpose of CAA or CWA disqualification?

As provided for in Executive Order 11738 (3 CFR, 1973 Comp., p. 799), the purpose of CAA and CWA disqualification is to enforce the Federal Government's policy of undertaking Federal procurement and nonprocurement activities in a manner that improves and enhances environmental quality by promoting effective enforcement of the CAA or CWA.

§ 1532.1125 How do award officials and others know if I am disqualified?

If you are convicted under these statutes, the EPA enters your name and address and that of the violating facility into the Excluded Parties List System (EPLS) as soon as possible after the EPA learns of your conviction. In addition, the EPA enters other information describing the nature of your disqualification. Federal award officials and others who administer Federal programs consult the EPLS before entering into or approving procurement and nonprocurement transactions. Anyone may access the EPLS through the internet, currently at <http://www.epls.gov>.

§ 1532.1130 How does disqualification under the CAA or CWA differ from a Federal discretionary suspension or debarment action?

(a) CAA and CWA disqualifications are exclusions mandated by statute. In contrast, suspensions and debarments imposed under subparts A through I of 2 CFR part 180 or under 48 CFR part 9, subpart 9.4, are exclusions imposed at the discretion of Federal suspending or debarring officials. This means that if you are convicted of violating the CAA or CWA provisions described under § 1532.1105, ordinarily your name and that of the violating facility is placed into the EPLS before you receive a confirmation notice of the listing, or have the opportunity to discuss the disqualification with, or seek reinstatement from, the EPA.

(b) CAA or CWA disqualification applies to both the person convicted of the offense, and to the violating facility during performance of an award or covered transaction under the Federal procurement and nonprocurement suspension and debarment system. It is the EPA's policy to carry out CAA and CWA disqualifications in a manner which integrates the disqualifications into the Governmentwide suspension and debarment system. Whenever the EPA determines that the risk presented to Federal procurement and nonprocurement activities on the basis of the misconduct which gives rise to a person's CAA or CWA conviction exceeds the coverage afforded by mandatory disqualification, the EPA may use its discretionary authority to suspend or debar a person under subparts A through I of 2 CFR part 180, or under 48 CFR part 9, subpart 9.4.

§ 1532.1135 Does CAA or CWA disqualification mean that I must remain ineligible?

You must remain ineligible until the EPA debarring official certifies that the condition giving rise to your conviction has been corrected. If you desire to have your disqualification terminated, you must submit a written request for reinstatement to the EPA debarring official and support your request with persuasive documentation. For information about the process for reinstatement see §§ 1532.1205 and 1532.1300.

§ 1532.1140 Can an exception be made to allow me to receive an award even though I may be disqualified?

(a) After consulting with the EPA debarring official, the head of any Federal department or agency (or designee) may exempt any particular award or a class of awards with that department or agency from CAA or CWA disqualification. In the event an exemption is granted, the exemption must:

- (1) Be in writing; and
 - (2) State why the exemption is in the paramount interests of the United States.
- (b) In the event an exemption is granted, the exempting department or

agency must send a copy of the exemption decision to the EPA debarring official for inclusion in the official record.

§ 1532.1200 How will I know if I am disqualified under the CAA or CWA?

There may be several ways that you learn about your disqualification. You are legally on notice by the statutes that a criminal conviction the CAA or CWA automatically disqualifies you. As a practical matter, you may learn about your disqualification from your defense counsel, a Federal contract or award official, or from someone else who sees your name in the EPLS. As a courtesy, the EPA will attempt to notify you and the owner, lessor or supervisor of the violating facility that your names have been entered into the EPLS. The EPA will inform you of the procedures for seeking reinstatement and give you the name of a person you can contact to discuss your reinstatement request.

§ 1532.1205 What procedures must I follow to have my procurement and nonprocurement eligibility reinstated under the CAA or CWA?

(a) You must submit a written request for reinstatement to the EPA debarring official stating what you believe the conditions were that led to your conviction, and how those conditions have been corrected, relieved or addressed. Your request must include documentation sufficient to support all material assertions you make. The debarring official must determine that all the technical and non-technical causes, conditions and consequences of your actions have been sufficiently addressed so that the Government can confidently conduct future business activities with you, and that your future operations will be conducted in compliance with the CAA and CWA.

(b) You may begin the reinstatement process by having informal discussions with the EPA representative named in your notification of listing. Having informal dialogue with that person will make you aware of the EPA concerns that must be addressed. The EPA representative is not required to negotiate conditions for your reinstatement. However, beginning the reinstatement process with informal dialogue in-

creases the chance of achieving a favorable outcome, and avoids unnecessary delay that may result from an incomplete or inadequate reinstatement request. It may also allow you to resolve your disqualification by reaching an agreement with the EPA debarring official under informal procedures. Using your informal option first does not prevent you from submitting a formal reinstatement request with the debarring official at any time.

§ 1532.1210 Will anyone else provide information to the EPA debarring official concerning my reinstatement request?

If you request reinstatement under § 1532.1205, the EPA debarring official may obtain review and comment on your request by anyone who may have information about, or an official interest in, the matter. For example, the debarring official may consult with the EPA Regional offices, the Department of Justice or other Federal agencies, or state, tribal or local governments. The EPA debarring official will make sure that you have an opportunity to address important allegations or information contained in the administrative record before making a final decision on your request for reinstatement.

§ 1532.1215 What happens if I disagree with the information provided by others to the EPA debarring official on my reinstatement request?

(a) If your reinstatement request is based on factual information (as opposed to a legal matter or discretionary conclusion) that is different from the information provided by others or otherwise contained in the administrative record, the debarring official will decide whether those facts are genuinely in dispute, and material to making a decision. If so, a fact-finding proceeding will be conducted in accordance with 2 CFR 180.830 through 180.840, and the debarring official will consider the findings when making a decision on your reinstatement request.

(b) If the basis for your disagreement with the information contained in the administrative record relates to a legal issue or discretionary conclusion, or is not a genuine dispute over a material fact, you will not have a fact-finding

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proceeding. However, the debarring official will allow you ample opportunity to support your position for the record and present matters in opposition to your continued disqualification. A summary of any information you provide orally, if not already recorded, should also be submitted to the debarring official in writing to assure that it is preserved for the debarring official's consideration and the administrative record.

§ 1532.1220 What will the EPA debarring official consider in making a decision on my reinstatement request?

(a) The EPA debarring official will consider all information and arguments contained in the administrative record in support of, or in opposition to, your request for reinstatement, including any findings of material fact.

(b) The debarring official will also consider any mitigating or aggravating factors that may relate to your conviction or the circumstances surrounding it, including any of those factors that appear in 2 CFR 180.860 that may apply to your situation.

(c) Finally, if disqualification applies to a business entity, the debarring official will consider any corporate or business attitude, policies, practices and procedures that contributed to the events leading to conviction, or that may have been implemented since the date of the misconduct or conviction. You can obtain any current policy directives issued by the EPA that apply to CAA or CWA disqualification or reinstatement by contacting the Office of the EPA Debarring Official, U.S. EPA, Office of Grants and Debarment (3901R), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

§ 1532.1225 When will the EPA debarring official make a decision on my reinstatement request?

(a) The EPA debarring official will make a decision regarding your reinstatement request under § 1532.1205(a), when the administrative record is complete, and he or she can determine whether the condition giving rise to the CAA or CWA conviction has been corrected—usually within 45 days of closing the administrative record.

(b) A reinstatement request is not officially before the debarring official while you are having informal discussions under § 1532.1205(b).

§ 1532.1230 How will the EPA debarring official notify me of the reinstatement decision?

The EPA debarring official will notify you of the reinstatement decision in writing, using the same methods for communicating debarment or suspension action notices under 2 CFR 180.615.

§ 1532.1300 Can I resolve my eligibility status under terms of an administrative agreement without having to submit a formal reinstatement request?

(a) The EPA debarring official may, at any time, resolve your CAA or CWA eligibility status under the terms of an administrative agreement. Ordinarily, the debarring official will not make an offer to you for reinstatement until after the administrative record for decision is complete, or contains enough information to enable him or her to make an informed decision in the matter.

(b) Any resolution of your eligibility status under the CAA or CWA resulting from an administrative agreement must include a certification that the condition giving rise to the conviction has been corrected.

(c) The EPA debarring official may enter into an administrative agreement to resolve CAA or CWA disqualification issues as part of a comprehensive criminal plea, civil or administrative agreement when it is in the best interest of the United States to do so.

§ 1532.1305 What are the consequences if I mislead the EPA in seeking reinstatement or fail to comply with my administrative agreement?

(a) Any certification of correction issued by the EPA debarring official whether the certification results from a reinstatement decision under §§ 1532.1205(a) and 1532.1230, or from an administrative agreement under §§ 1532.1205(b) and 1532.1300, is conditioned upon the accuracy of the information, representations or assurances made during development of the administrative record.

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(b) If the EPA debarring official finds that he or she has certified correction of the condition giving rise to a CAA or CWA conviction or violation on the basis of a false, misleading, incomplete or inaccurate information; or if a person fails to comply with material condition of an administrative agreement, the EPA debarring official may take suspension or debarment action against the person(s) responsible for the misinformation or noncompliance with the agreement as appropriate. If anyone provides false, inaccurate, incomplete or misleading information to EPA in an attempt to obtain reinstatement, the EPA debarring official will refer the matter to the EPA Office of Inspector General for potential criminal or civil action.

§ 1532.1400 How may I appeal a decision denying my request for reinstatement?

(a) If the EPA debarring official denies your request for reinstatement under the CAA or CWA, you can ask for review of the debarring official's decision in two ways:

(1) You may ask the debarring official to reconsider the decision for material errors of fact or law that you believe will change the outcome of the matter; and/ or

(2) You may request the Director, Office of Grants and Debarment (OGD Director), to review the debarring official's denial within 30 days of your receipt of the debarring official's decision under § 1532.1230 or paragraph (a)(1) of this section. However, the OGD Director can reverse the debarring official's decision denying reinstatement only where the OGD Director finds that there is a clear error of material fact or law, or where the OGD Director finds that the debarring official's decision was arbitrary, capricious, or an abuse of discretion.

(b) A request for review under this section must be in writing and state the specific findings you believe to be in error and include the reasons or legal bases for your position.

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(c) A review under this section is solely within the discretion of the OGD Director.

(d) The OGD Director must notify you of his or her decision under this section, in writing, using the notice procedures at 2 CFR 180.615 and 180.975.

§ 1532.1500 If I am reinstated, when will my name be removed from the EPLS?

If your eligibility for procurement and nonprocurement participation is restored under the CAA or CWA, whether by decision, appeal, or by administrative agreement, the EPA will remove your name and that of the violating facility from the EPLS, generally within 5 working days of your reinstatement.

§ 1532.1600 What definitions apply specifically to actions under this subpart?

In addition to definitions under subpart A through I of 2 CFR part 180 that apply to this part as a whole, the following two definitions apply specifically to CAA and CWA disqualifications under this subpart:

(a) Person means an individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state, or any interstate body.

(b) Violating facility means any building, plant, installation, structure, mine, vessel, floating craft, location or site of operations that gives rise to a CAA or CWA conviction, and is a location at which or from which a Federal contract, subcontract, loan, assistance award or other covered transactions may be performed. If a site of operations giving rise to a CAA or CWA conviction contains or includes more than one building, plant, installation, structure, mine, vessel, floating craft, or other operational element, the entire location or site of operation is regarded as the violating facility unless otherwise limited by the EPA.

CHAPTER XVIII—NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

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PART 1880—NONPROCUREMENT DEBARMENT AND SUSPENSION

Sec.

1880.10 What does this part do?

1880.20 Does this part apply to me?

1880.30 What policies and procedures must I follow?

Subpart A—General

1880.137 Who in NASA may grant an exception to let an excluded person participate in a covered transaction?

Subpart B—Covered Transactions

1880.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

Subpart C—Responsibilities of Participants Regarding Transactions

1880.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

1880.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

Subparts E–J [Reserved]

AUTHORITY: Sec. 2455, Pub. L. 103–355, 108 Stat. 3327; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235; 42 U.S.C. 2473(c)(1).

SOURCE: 72 FR 19783, Apr. 20, 2007, unless otherwise noted.

§ 1880.10 What does this part do?

This part adopts the Office of Management and Budget (OMB) guidance in subparts A through I of 2 CFR part 180, as supplemented by this part, as the NASA policies and procedures for nonprocurement debarment and suspension. It thereby gives regulatory effect for NASA to the OMB guidance as supplemented by this part. This part satisfies the requirements in section 3 of Executive Order 12549, “Debarment and Suspension” (3 CFR 1986 Comp., p. 189), Executive Order 12689, “Debarment and Suspension” (3 CFR 1989 Comp., p. 235) and 31 U.S.C. 6101 note (Section 2455, Public Law 103–355, 108 Stat. 3327).

§ 1880.20 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in subparts A through I of 2 CFR part 180 (see table at 2 CFR 180.100(b)) apply to you if you are a—

(a) Participant or principal in a “covered transaction” (see subpart B of 2 CFR part 180 and the definition of “nonprocurement transaction” at 2 CFR 180.970);

(b) Respondent in a NASA suspension or debarment action;

(c) NASA debarment or suspension official; or

(d) NASA grants officer, agreements officer, or other official authorized to enter into any type of nonprocurement transaction that is a covered transaction.

§ 1880.30 What policies and procedures must I follow?

The NASA policies and procedures that you must follow are the policies and procedures specified in each applicable section of the OMB guidance in subparts A through I of 2 CFR part 180, as that section is supplemented by the section in this part with the same section number. The contracts that are covered transactions, for example, are specified by section 220 of the OMB guidance (*i.e.*, 2 CFR 180.220) as supplemented by section 220 in this part (*i.e.*, § 1880.220). For any section of OMB guidance in subparts A through I of 2 CFR 180 that has no corresponding section in this part, NASA policies and procedures are those in the OMB guidance.

Subpart A—General

§ 1880.137 Who in NASA may grant an exception to let an excluded person participate in a covered transaction?

The Chief Acquisition Officer has the authority to grant an exception to let an excluded person participate in a covered transaction, as provided in the OMB guidance at 2 CFR 180.135.

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Subpart B—Covered Transactions

§ 1880.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

Although the OMB guidance at 2 CFR 180.220(c) allows a Federal agency to do so (also see optional lower tier coverage in the figure in the appendix to 2 CFR part 180), NASA does not extend coverage of nonprocurement suspension and debarment requirements beyond first-tier procurement contracts under a covered nonprocurement transaction.

Subpart C—Responsibilities of Participants Regarding Transactions

§ 1880.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

You as a participant must include a term or condition in lower-tier trans-

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actions requiring lower-tier participants to comply with subpart C of the OMB guidance in 2 CFR part 180, as supplemented by this subpart.

Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

§ 1880.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

To communicate to a participant the requirements described in 2 CFR 180.435 of the OMB guidance, you must include a term or condition in the transaction that requires the participant's compliance with subpart C of 2 CFR part 180, as supplemented by subpart C of this part, and requires the participant to include a similar term or condition in lower-tier covered transactions.

Subparts E–J [Reserved]

CHAPTER XXII—CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

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PART 2200—NONPROCUREMENT DEBARMENT AND SUSPENSION

Sec.

2200.10 What does this part do?

2200.20 Does this part apply to me?

2200.30 What policies and procedures must I follow?

2200.137 Who in the Corporation for National and Community Service may grant an exception to let an excluded person participate in a covered transaction?

2200.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

2200.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

2200.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

AUTHORITY: Sec. 2455, Pub. L. 103-355, 108 Stat. 3327; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235; 22 U.S.C. 2503(b).

SOURCE: 72 FR 28826, May 23, 2007, unless otherwise noted.

§ 2200.10 What does this part do?

This part adopts the Office of Management and Budget (OMB) guidance in subparts A through I of 2 CFR part 180, as supplemented by this part, as the Corporation for National and Community Service policies and procedures for nonprocurement debarment and suspension. It thereby gives regulatory effect for the Corporation for National and Community Service to the OMB guidance as supplemented by this part. This part satisfies the requirements in section 3 of Executive Order 12549, “Debarment and Suspension” (3 CFR 1986 Comp., p. 189), Executive Order 12689, “Debarment and Suspension” (3 CFR 1989 Comp., p. 235) and 31 U.S.C. 6101 note (Section 2455, Pub. L. 103-355, 108 Stat. 3327).

§ 2200.20 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in subparts A through I of 2 CFR part (see table at 2 CFR 180.100(b)) apply to you if you are a—

(a) Participant or principal in a “covered transaction.” (see subpart B of 2 CFR part 180 and the definition of

“nonprocurement transaction” at 2 CFR 180.970.

(b) Respondent in a Corporation for National and Community Service suspension or debarment action;

(c) Corporation for National and Community Service debarment or suspension official; or

(d) Corporation for National and Community Service grants officer, agreements officer, or other official authorized to enter into any type of nonprocurement transaction that is a covered transaction.

§ 2200.30 What policies and procedures must I follow?

The Corporation for National and Community Service policies and procedures that you must follow are the policies and procedures specified in each applicable section of the OMB guidance in subparts A through I of 2 CFR part 180, as that section is supplemented by the section in this part with the same section number. The contracts that are covered transactions, for example, are specified by section 220 of the OMB guidance (*i.e.*, 2 CFR 180.220) as supplemented by section 220 in this part (*i.e.*, Sec. 2200.220). For any section of OMB guidance in subparts A through I of 2 CFR part 180 that has no corresponding section in this part, Corporation for National and Community Service policies and procedures are those in the OMB guidance.

§ 2200.137 Who in the Corporation for National and Community Service may grant an exception to let an excluded person participate in a covered transaction?

The Chief Executive Officer (or another official designated by the Chief Executive Officer) has the authority to grant an exception to let an excluded person participate in a covered transaction, as provided in the OMB guidance at 2 CFR 180.135.

§ 2200.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

Although the OMB guidance at 2 CFR 180.220(c) allows a Federal agency to do so (also see optional lower tier coverage in the figure in the appendix to 2 CFR part 180), Corporation for National

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and Community Service does not extend coverage of nonprocurement suspension and debarment requirements beyond first-tier procurement contracts under a covered nonprocurement transaction.

§ 2200.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

You as a participant must include a term or condition in lower-tier transactions requiring lower-tier participants to comply with subpart C of the OMB guidance in 2 CFR part 180.

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§ 2200.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

To communicate to a participant the requirements described in 2 CFR 180.435 of the OMB guidance, you as an agency official must include a term or condition in the transaction that requires the participant's compliance with subpart C of 2 CFR part 180, and requires the participant to include a similar term or condition in lower-tier covered transactions.

CHAPTER XXIII—SOCIAL SECURITY ADMINISTRATION

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PART 2336—NONPROCUREMENT DEBARMENT AND SUSPENSION

Sec.

2336.10 What does this part do?

2336.20 Does this part apply to me?

2336.30 What policies and procedures must I follow?

Subpart A—General

2336.137 Who in the SSA may grant an exception to let an excluded person participate in a covered transaction?

Subpart B—Covered Transactions

2336.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

Subpart C—Responsibilities of Participants Regarding Transactions

2336.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

2336.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

Subparts E–J [Reserved]

AUTHORITY: 42 U.S.C. 902(a)(5); Sec. 2455, Pub. L. 103–355, 108 Stat. 3327; E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235).

SOURCE: 72 FR 46140, Aug. 17, 2007, unless otherwise noted.

§ 2336.10 What does this part do?

This part adopts the Office of Management and Budget (OMB) guidance in subparts A through I of 2 CFR part 180, as supplemented by this part, as the SSA policies and procedures for nonprocurement debarment and suspension. This part satisfies the requirements in section 3 of Executive Order 12549, “Debarment and Suspension” (3 CFR 1986 Comp., p. 189), Executive Order 12689, “Debarment and Suspension” (3 CFR 1989 Comp., p. 235) and 31 U.S.C. 6101 note (Section 2455, Pub. L. 103–355, 108 Stat. 3327).

§ 2336.20 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in subparts A through I of 2 CFR part 180 (see table at 2 CFR 180.100(b)) apply to you if you are a—

(a) Participant or principal in a “covered transaction” (see subpart B of 2 CFR part 180 and the definition of “nonprocurement transaction” at 2 CFR 180.970);

(b) Respondent in an SSA suspension or debarment action;

(c) SSA debarment or suspension official; or

(d) SSA grants officer, agreements officer, or other official authorized to enter into any type of nonprocurement transaction that is a covered transaction.

§ 2336.30 What policies and procedures must I follow?

The SSA policies and procedures that you must follow are the policies and procedures specified in each applicable section of the OMB guidance in subparts A through I of 2 CFR part 180, as supplemented by the section in this part with the same section number. The contracts that are covered transactions, for example, are specified by section 220 of the OMB guidance (i.e., 2 CFR 180.220), as supplemented by section 220 in this part (i.e., § 2336.220). For any section of OMB guidance in subparts A through I of 2 CFR 180 that has no corresponding section in this part, SSA policies and procedures are those in the OMB guidance.

Subpart A—General

§ 2336.137 Who in the SSA may grant an exception to let an excluded person participate in a covered transaction?

(a) Within the Social Security Administration, the Commissioner or the designated agency debarment official may grant an exception permitting an excluded person to participate in a particular covered transaction. If the Commissioner or the designated agency debarment official grants an exception, the exception must be in writing and state the reason(s) for deviating from the OMB guidance at 2 CFR 180.135.

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(b) An exception granted by one agency for an excluded person does not extend to the covered transactions of another agency.

Subpart B—Covered Transactions

§ 2336.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

Although the OMB guidance at 2 CFR 180.220(c) allows a Federal agency to do so (also see option lower tier coverage in the figure in the appendix to 2 CFR part 180), SSA does not extend coverage of nonprocurement suspension and debarment requirements beyond first-tier procurement contracts under a covered nonprocurement transaction.

Subpart C—Responsibilities of Participants Regarding Transactions

§ 2336.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

You as a participant must include a term or condition in lower-tier trans-

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actions requiring lower-tier participants to comply with subpart C of the OMB guidance in 2 CFR part 180, as supplemented by this subpart.

Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

§ 2336.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

To communicate to a participant the requirements described in 2 CFR 180.435 of the OMB guidance, you must include a term or condition in the transaction that requires the participant's compliance with subpart C of 2 CFR part 180, as supplemented by subpart C of this part, and requires the participant to include a similar term or condition in lower-tier covered transactions.

Subparts E–J [Reserved]

CHAPTER XXIV—DEPARTMENT OF HOUSING
AND URBAN DEVELOPMENT

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PART 2424—NONPROCUREMENT DEBARMENT AND SUSPENSION

Sec.

2424.10 What does this part do?

2424.20 Does this part apply to me?

2424.30 What policies and procedures must I follow?

Subpart A—General

2424.137 Who in HUD may grant an exception to let an excluded person participate in a covered transaction?

Subpart B—Covered Transactions

2424.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

Subpart C—Responsibilities of Participants Regarding Transactions

2424.300 What must I do before I enter into a covered transaction with another person at the next lower tier (HUD supplement to governmentwide definition at 2 CFR 180.300)?

2424.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

2424.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

Subparts E–F [Reserved]

Subpart G—Suspension

2424.747 Who conducts fact finding for HUD suspensions?

Subpart H—Debarment

2424.842 Who conducts fact finding for HUD debarments?

Subpart I—Definitions

2424.952 Hearing officer.

2424.970 Nonprocurement transaction (HUD supplement to governmentwide definition at 2 CFR 180.970).

2424.995 Principal (HUD supplement to governmentwide definition at 2 CFR 180.995).

2424.1017 Ultimate beneficiary.

Subpart J—Limited Denial of Participation

2424.1100 What is a limited denial of participation?

2424.1105 Who may issue a limited denial of participation?

2424.1110 When may a HUD official issue a limited denial of participation?

2424.1115 When does a limited denial of participation take effect?

2424.1120 How long may a limited denial of participation last?

2424.1125 How does a limited denial of participation start?

2424.1130 How may I contest my limited denial of participation?

2424.1135 Do Federal agencies coordinate limited denial of participation actions?

2424.1140 What is the scope of a limited denial of participation?

2424.1145 May HUD impute the conduct of one person to another in a limited denial of participation?

2424.1150 What is the effect of a suspension or debarment on a limited denial of participation?

2424.1155 What is the effect of a limited denial of participation on a suspension or a debarment?

2424.1160 May a limited denial of participation be terminated before the term of the limited denial of participation expires?

2424.1165 How is a limited denial of participation reported?

AUTHORITY: Sec. 2455, Pub. L. 103-355, 108 Stat. 3327; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235.

SOURCE: 72 FR 73487, Dec. 27, 2007, unless otherwise noted.

§ 2424.10 What does this part do?

In this part, HUD adopts, as HUD policies, procedures, and requirements for nonprocurement debarment and suspension, the OMB guidance in subparts A through I of 2 CFR part 180, as supplemented by this part. This adoption thereby gives regulatory effect for HUD to the OMB guidance, as supplemented by this part. This part satisfies the requirements in section 3 of Executive Order 12549, “Debarment and Suspension” (3 CFR 1986 Comp., p. 189), Executive Order 12689, “Debarment and Suspension” (3 CFR 1989 Comp., p. 235) and 31 U.S.C. 6101 note (Section 2455, Pub. L. 103-355, 108 Stat. 3327).

§ 2424.20 Does this part apply to me?

This part and, through this part, pertinent portions of subparts A through I of 2 CFR part 180 (see table at 2 CFR 180.100(b)), apply to you if you are a—

(a) Participant or principal in a “covered transaction” (see subpart B of 2 CFR part 180 and the definition of

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“nonprocurement transaction” at 2 CFR 180.970, as supplemented by § 2424.970 of this part);

(b) Respondent in a HUD suspension or debarment action;

(c) HUD debarment or suspension official; or

(d) HUD grants officer, agreements officer, or other official authorized to enter into any type of nonprocurement transaction that is a covered transaction.

§ 2424.30 What policies and procedures must I follow?

The HUD policies and procedures that you must follow are the policies and procedures specified in each applicable section of the OMB guidance in subparts A through I of 2 CFR part 180, as that section is supplemented by the section in this part with the same section number. The contracts that are covered transactions, for example, are specified by section 220 of the OMB guidance (i.e., 2 CFR 180.220), as supplemented by section 220 in this part (i.e., § 2424.220). For any section of OMB guidance in subparts A through I of 2 CFR 180 that has no corresponding section in this part, HUD policies and procedures are those in the OMB guidance.

Subpart A—General

§ 2424.137 Who in HUD may grant an exception to let an excluded person participate in a covered transaction?

The Secretary or designee may grant an exception permitting an excluded person to participate in a particular covered transaction. If the Secretary or a designee grants an exception, the exception must be in writing and state the reason(s) for deviating from the governmentwide policy in Executive Order 12549.

Subpart B—Covered Transactions

§ 2424.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

In addition to the contracts covered under 2 CFR 180.220(b) of the OMB guidance, this part applies to any contract, regardless of tier, that is awarded by a

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contractor, subcontractor, supplier, consultant, or its agent or representative in any transaction, if the contract is to be funded or provided by HUD under a covered nonprocurement transaction and the amount of the contract is expected to equal or exceed \$25,000. This extends the coverage of the HUD nonprocurement suspension and debarment requirements to all lower tiers of subcontracts under covered nonprocurement transactions, as permitted under the OMB guidance at 2 CFR 180.220(c) (see optional lower-tier coverage in the figure in the appendix to 2 CFR part 180).

Subpart C—Responsibilities of Participants Regarding Transactions

§ 2424.300 What must I do before I enter into a covered transaction with another person at the next lower tier (HUD supplement to governmentwide definition at 2 CFR 180.300)?

(a) You, as a participant, are responsible for determining whether you are entering into a covered transaction with an excluded or disqualified person. You may decide the method by which you do so.

(1) You may, but are not required to, check the Excluded Parties List System (EPLS).

(2) You may, but are not required to, collect a certification from that person.

(b) In the case of an employment contract, HUD does not require employers to check the EPLS prior to making salary payments pursuant to that contract.

§ 2424.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

To communicate the requirements to lower-tier participants, you must include a term or condition in the transaction requiring compliance with subpart C of the OMB guidance in 2 CFR part 180, as supplemented by this subpart.

Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

§ 2424.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

To communicate to a participant the requirements described in 2 CFR 180.435 of the OMB guidance, you must include a term or condition in the transaction that requires the participant to: comply with subpart C of 2 CFR part 180, as supplemented by subpart C of this part, and include a similar term or condition in lower-tier covered transactions.

Subparts E-F [Reserved]

Subpart G—Suspension

§ 2424.747 Who conducts fact finding for HUD suspensions?

In all HUD suspensions, the official who shall conduct additional proceedings where disputed material facts are challenged shall be a hearing officer.

Subpart H—Debarment

§ 2424.842 Who conducts fact finding for HUD debarments?

In all HUD debarments, the official who shall conduct additional proceedings where disputed material facts are challenged shall be a hearing officer.

Subpart I—Definitions

§ 2424.952 Hearing officer.

Hearing Officer means an Administrative Law Judge or Office of Appeals Judge authorized by HUD's Secretary or by the Secretary's designee to conduct proceedings under this part.

§ 2424.970 Nonprocurement transaction (HUD supplement to governmentwide definition at 2 CFR 180.970).

In the case of employment contracts that are covered transactions, each salary payment under the contract is a separate covered transaction.

§ 2424.995 Principal (HUD supplement to governmentwide definition at 2 CFR 180.995).

A person who has a critical influence on, or substantive control over, a covered transaction, whether or not employed by the participant. Persons who have a critical influence on, or substantive control over, a covered transaction may include, but are not limited to:

- (a) Loan officers;
- (b) Staff appraisers and inspectors;
- (c) Underwriters;
- (d) Bonding companies;
- (e) Borrowers under programs financed by HUD or with loans guaranteed, insured, or subsidized through HUD programs;
- (f) Purchasers of properties with HUD-insured or Secretary-held mortgages;
- (g) Recipients under HUD assistance agreements;
- (h) Ultimate beneficiaries of HUD programs;
- (i) Fee appraisers and inspectors;
- (j) Real estate agents and brokers;
- (k) Management and marketing agents;
- (l) Accountants, consultants, investment bankers, architects, engineers, and attorneys who are in a business relationship with participants in connection with a covered transaction under a HUD program;
- (m) Contractors involved in the construction or rehabilitation of properties financed by HUD, with HUD-insured loans or acquired properties, including properties held by HUD as mortgagee-in-possession;
- (n) Closing agents;
- (o) Turnkey developers of projects financed by or with financing insured by HUD;
- (p) Title companies;
- (q) Escrow agents;
- (r) Project owners;
- (s) Administrators of hospitals, nursing homes, and projects for the elderly financed or insured by HUD; and
- (t) Developers, sellers, or owners of property financed with loans insured under Title I or Title II of the National Housing Act.

§ 2424.1017 Ultimate beneficiary.

Ultimate beneficiaries of HUD programs include, but are not limited to, subsidized tenants and subsidized mortgagors, such as those assisted under Section 8 Housing Assistance Payment contracts, by Section 236 Rental Assistance, or by Rent Supplement payments.

Subpart J—Limited Denial of Participation

§ 2424.1100 What is a limited denial of participation?

A limited denial of participation excludes a specific person from participating in a specific program, or programs, within a HUD field office's geographic jurisdiction, for a specific period of time. A limited denial of participation is normally issued by a HUD field office, but may be issued by a Headquarters office. The decision to impose a limited denial of participation is discretionary and based on the best interests of the federal government.

§ 2424.1105 Who may issue a limited denial of participation?

The Secretary designates HUD officials who are authorized to impose a limited denial of participation, affecting any participant and/or their affiliates, except mortgagees approved by the Federal Housing Administration (FHA).

§ 2424.1110 When may a HUD official issue a limited denial of participation?

(a) An authorized HUD official may issue a limited denial of participation against a person, based upon adequate evidence of any of the following causes:

- (1) Approval of an applicant for insurance would constitute an unsatisfactory risk;
- (2) There are irregularities in a person's past performance in a HUD program;
- (3) The person has failed to maintain the prerequisites of eligibility to participate in a HUD program;
- (4) The person has failed to honor contractual obligations or to proceed in accordance with contract specifications or HUD regulations;

(5) The person has failed to satisfy, upon completion, the requirements of an assistance agreement or contract;

(6) The person has deficiencies in ongoing construction projects;

(7) The person has falsely certified in connection with any HUD program, whether or not the certification was made directly to HUD;

(8) The person has committed any act or omission that would be cause for debarment under 2 CFR 180.800;

(9) The person has violated any law, regulation, or procedure relating to the application for financial assistance, insurance, or guarantee, or to the performance of obligations incurred pursuant to a grant of financial assistance or pursuant to a conditional or final commitment to insure or guarantee;

(10) The person has made or procured to be made any false statement for the purpose of influencing in any way an action of the Department; or

(11) Imposition of a limited denial of participation by any other HUD office.

(b) Filing of a criminal Indictment or Information shall constitute adequate evidence for the purpose of limited denial of participation actions. The Indictment or Information need not be based on offenses against HUD.

(c) Imposition of a limited denial of participation by any other HUD office shall constitute adequate evidence for a concurrent limited denial of participation. Where such a concurrent limited denial of participation is imposed, participation may be restricted on the same basis without the need for an additional conference or further hearing.

(d) An affiliate or organizational element may be included in a limited denial of participation solely on the basis of its affiliation, and regardless of its knowledge of or participation in the acts providing cause for the sanction. The burden of proving that a particular affiliate or organizational element is currently responsible and not controlled by the primary sanctioned party (or by an entity that itself is controlled by the primary sanctioned party) is on the affiliate or organizational element.

§ 2424.1115 When does a limited denial of participation take effect?

A limited denial of participation is effective immediately upon issuance of the notice.

§ 2424.1120 How long may a limited denial of participation last?

A limited denial of participation may remain in effect up to 12 months.

§ 2424.1125 How does a limited denial of participation start?

A limited denial of participation is made effective by providing the person, and any specifically named affiliate, with notice:

- (a) That the limited denial of participation is being imposed;
- (b) Of the cause(s) under § 2424.1110 for the sanction;
- (c) Of the potential effect of the sanction, including the length of the sanction and the HUD program(s) and geographic area affected by the sanction;
- (d) Of the right to request, in writing, within 30 days of receipt of the notice, a conference under § 2424.1130; and
- (e) Of the right to contest the limited denial of participation under § 2424.1130.

§ 2424.1130 How may I contest my limited denial of participation?

(a) Within 30 days after receiving a notice of limited denial of participation, you may request a conference with the official who issued such notice. The conference shall be held within 15 days after the Department's receipt of the request for a conference, unless you waive this time limit. The official or designee who imposed the sanction shall preside. At the conference, you may appear with a representative and may present all relevant information and materials to the official or designee. Within 20 days after the conference, or within 20 days after any agreed-upon extension of time for submission of additional materials, the official or designee shall, in writing, advise you of the decision to terminate, modify, or affirm the limited denial of participation. If all or a portion of the remaining period of exclusion is affirmed, the notice of affirmation shall advise you of the opportunity to contest the notice and to request a hearing before a Departmental

Hearing Officer. You have 30 days after receipt of the notice of affirmation to request this hearing. If the official or designee does not issue a decision within the 20-day period, you may contest the sanction before a Departmental Hearing Officer. Again, you have 30 days from the expiration of the 20-day period to request this hearing. If you request a hearing before the Departmental Hearing Officer, you must submit your request to the Debarment Docket Clerk, Department of Housing and Urban Development, 451 Seventh Street, SW., B-133 Portals 200, Washington DC 20410-0500.

(b) You may skip the conference with the official and you may request a hearing before a Departmental Hearing Officer. This must also be done within 30 days after receiving a notice of limited denial of participation. If you opt to have a hearing before a Departmental Hearing Officer, you must submit your request to the Debarment Docket Clerk, Department of Housing and Urban Development, 451 Seventh Street, SW., B-133 Portals 200, Washington DC 20410-0500. The hearing before the Departmental Hearing Officer is more formal than the conference before the sanctioning official described above. The Departmental Hearing Officer will conduct the hearing in accordance with 24 CFR part 26, subpart A. The Departmental Hearing Officer will issue findings of fact and make a recommended decision. The sanctioning official will then make a final decision, as promptly as possible, after the Departmental Hearing Officer's recommended decision is issued. The sanctioning official may reject the recommended decision or any findings of fact, only after specifically determining that the decision or any of the facts are arbitrary, capricious, or clearly erroneous.

(c) In deciding whether to terminate, modify, or affirm a limited denial of participation, the Departmental official or designee may consider the factors listed at 2 CFR 180.860. The Departmental Hearing Officer may also consider the factors listed at 2 CFR 180.860 in making any recommended decision.

§ 2424.1135 Do Federal agencies coordinate limited denial of participation actions?

Federal agencies do not coordinate limited denial of participation actions. As stated in § 2424.1100, a limited denial of participation is a HUD-specific action and applies only to HUD activities.

§ 2424.1140 What is the scope of a limited denial of participation?

The scope of a limited denial of participation is as follows:

(a) A limited denial of participation generally extends only to participation in the program under which the cause arose. A limited denial of participation may, at the discretion of the authorized official, extend to other programs, initiatives, or functions within the jurisdiction of an Assistant Secretary. The authorized official, however, may determine that where the sanction is based on an indictment or conviction, the sanction shall apply to all programs throughout HUD.

(b) For purposes of this subpart, participation includes receipt of any benefit or financial assistance through grants or contractual arrangements; benefits or assistance in the form of loan guarantees or insurance; and awards of procurement contracts.

(c) The sanction may be imposed for a period not to exceed 12 months, and shall be effective within the geographic jurisdiction of the office imposing it, unless the sanction is imposed by an Assistant Secretary or Deputy Assistant Secretary, in which case the sanction may be imposed on either a nationwide or a more restricted basis.

§ 2424.1145 May HUD impute the conduct of one person to another in a limited denial of participation?

For purposes of determining a limited denial of participation, HUD may impute conduct as follows:

(a) *Conduct imputed from an individual to an organization.* HUD may impute the fraudulent, criminal, or other improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with an organization, to that organization when the improper conduct occurred in connection with the individual's perform-

ance of duties for or on behalf of that organization, or with the organization's knowledge, approval, or acquiescence. The organization's acceptance of the benefits derived from the conduct is evidence of knowledge, approval, or acquiescence.

(b) *Conduct imputed from an organization to an individual or between individuals.* HUD may impute the fraudulent, criminal, or other improper conduct of any organization to an individual, or from one individual to another individual, if the individual to whom the improper conduct is imputed participated in, had knowledge of, or had reason to know of the improper conduct.

(c) *Conduct imputed from one organization to another organization.* HUD may impute the fraudulent, criminal, or other improper conduct of one organization to another organization when the improper conduct occurred in connection with a partnership, joint venture, joint application, association, or similar arrangement, or when the organization to whom the improper conduct is imputed has the power to direct, manage, control, or influence the activities of the organization responsible for the improper conduct. Acceptance of the benefits derived from the conduct is evidence of knowledge, approval, or acquiescence.

§ 2424.1150 What is the effect of a suspension or debarment on a limited denial of participation?

If you have submitted a request for a hearing pursuant to § 2424.1130 of this subpart, and you also receive, pursuant to subpart G or H of this part, a notice of proposed debarment or suspension that is based on the same transaction(s) or the same conduct as the limited denial of participation, as determined by the debarring or suspending official, the following rules shall apply:

(a) During the 30-day period after you receive a notice of proposed debarment or suspension, during which you may elect to contest the debarment under 2 CFR 180.815, or the suspension pursuant to 2 CFR 180.720, all proceedings in the limited denial of participation, including discovery, are automatically stayed.

(b) If you do not contest the proposed debarment pursuant to 2 CFR 180.815, or the suspension pursuant to 2 CFR 180.720, the final imposition of the debarment or suspension shall also constitute a final decision with respect to the limited denial of participation, to the extent that the debarment or suspension is based on the same transaction(s) or conduct as the limited denial of participation.

(c) If you contest the proposed debarment pursuant to 2 CFR 180.815, or the suspension pursuant to 2 CFR 180.720, then:

(1) Those parts of the limited denial of participation and the debarment or suspension based on the same transaction(s) or conduct, as determined by the debarring or suspending official, shall be immediately consolidated before the debarring or suspending official;

(2) Proceedings under the consolidated portions of the limited denial of participation shall be stayed before the hearing officer until the suspending or debarring official makes a determination as to whether the consolidated matters should be referred to a hearing officer. Such a determination must be made within 90 days of the date of the issuance of the suspension or proposed debarment, unless the suspending/debarring official extends the period for good cause.

(i) If the suspending or debarring official determines that there is a genuine dispute as to material facts regarding the consolidated matter, the entire consolidated matter will be referred to the hearing officer hearing the limited denial of participation, for additional proceedings pursuant to 2 CFR 180.750 or 180.845.

(ii) If the suspending or debarring official determines that there is no dispute as to material facts regarding the consolidated matter, jurisdiction of the hearing officer under 2 CFR part 2424,

subpart J, to hear those parts of the limited denial of participation based on the same transaction[s] or conduct as the debarment or suspension, as determined by the debarring or suspending official, will be transferred to the debarring or suspending official, and the hearing officer responsible for hearing the limited denial of participation shall transfer the administrative record to the debarring or suspending official.

(3) The suspending or debarring official shall hear the entire consolidated case under the procedures governing suspensions and debarments, and shall issue a final decision as to both the limited denial of participation and the suspension or debarment.

§ 2424.1155 What is the effect of a limited denial of participation on a suspension or a debarment?

The imposition of a limited denial of participation does not affect the right of the Department to suspend or debar any person under this part.

§ 2424.1160 May a limited denial of participation be terminated before the term of the limited denial of participation expires?

If the cause for the limited denial of participation is resolved before the expiration of the 12-month period, the official who imposed the sanction may terminate it.

§ 2424.1165 How is a limited denial of participation reported?

When a limited denial of participation has been made final, or the period for requesting a conference pursuant to § 2424.1130 has expired without receipt of such a request, the official imposing the limited denial of participation shall notify the Director of the Compliance Division in the Departmental Enforcement Center of the scope of the limited denial of participation.

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PART 2520—NONPROCUREMENT DEBARMENT AND SUSPENSION

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2520.30 What policies and procedures must I follow?

Subpart A—General

2520.137 Who in NSF may grant an exception to let an excluded person participate in a covered transaction?

Subpart B—Covered Transactions

2520.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

Subpart C—Responsibilities of Participants Regarding Transactions

2520.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

2520.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

Subparts E-I [Reserved]≤

AUTHORITY: 42 U.S.C. 1870(a); Sec. 2455, Pub. L. 103-355, 108 Stat. 3327; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235.

SOURCE: 72 FR 4944, Feb. 2, 2007, unless otherwise noted.

§ 2520.10 What does this part do?

This part adopts the Office of Management and Budget (OMB) guidance in subparts A through I of 2 CFR part 180, as supplemented by this part, as the NSF policies and procedures for nonprocurement debarment and suspension. It thereby gives regulatory effect for NSF to the OMB guidance as supplemented by this part. This part satisfies the requirements in section 3 of Executive Order 12549, “Debarment and Suspension” (3 CFR 1986 Comp., p. 189), Executive Order 12689, “Debarment and Suspension” (3 CFR 1989 Comp., p. 235)

and 31 U.S.C. 6101 note (Section 2455, Public Law 103-355, 108 Stat. 3327).

§ 2520.20 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in subparts A through I of 2 CFR part 180 (see table at 2 CFR 180.100(b)) apply to you if you are a—

(a) Participant or principal in a “covered transaction” (see Subpart B of 2 CFR part 180 and the definition of “nonprocurement transaction” at 2 CFR 180.970).

(b) Respondent in an NSF suspension or debarment action.

(c) NSF debarment or suspension official.

(d) NSF grants officer, agreements officer, or other official authorized to enter into any type of nonprocurement transaction that is a covered transaction.

§ 2520.30 What policies and procedures must I follow?

The NSF policies and procedures that you must follow are the policies and procedures specified in each applicable section of the OMB guidance in subparts A through I of 2 CFR part 180, as that section is supplemented by the section in this part with the same section number. The contracts that are covered transactions, for example, are specified by section 220 of the OMB guidance (i.e., 2 CFR 180.220) as supplemented by section 220 in this part (i.e., § 2520.220). For any section of OMB guidance in subparts A through I of 2 CFR 180 that has no corresponding section in this part, NSF policies and procedures are those in the OMB guidance.

Subpart A—General

§ 2520.137 Who in NSF may grant an exception to let an excluded person participate in a covered transaction?

The NSF Director and the Deputy Director have the authority to grant an exception to let an excluded person participate in a covered transaction.

§ 2520.220

Subpart B—Covered Transactions

§ 2520.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

Although the OMB guidance at 2 CFR 180.220(c) allows a Federal agency to do so (also see optional lower tier coverage in the figure in the appendix to 2 CFR part 180), NSF does not extend coverage of nonprocurement suspension and debarment requirements beyond first-tier procurement contracts under a covered nonprocurement transaction.

Subpart C—Responsibilities of Participants Regarding Transactions

§ 2520.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

You as a participant must include a term or condition in lower-tier trans-

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actions requiring lower-tier participants to comply with subpart C of the OMB guidance in 2 CFR part 180, as supplemented by this subpart.

Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

§ 2520.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

To communicate to a participant the requirements described in 2 CFR 180.435 of the OMB guidance, you must include a term or condition in the transaction that requires the participant's compliance with subpart C of 2 CFR part 180, as supplemented by subpart C of this part, and requires the participant to include a similar term or condition in lower-tier covered transactions.

Subparts E–I [Reserved]

CHAPTER XXVI—NATIONAL ARCHIVES AND
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PART 2600—NONPROCUREMENT DEBARMENT AND SUSPENSION

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Subpart B—Covered Transactions

2600.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

Subpart C—Responsibilities of Participants Regarding Transactions

2600.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

2600.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

Subparts E–J [Reserved]

AUTHORITY: Sec. 2455, Pub. L. 103–355, 108 Stat. 3327; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235; 44 U.S.C. 2104(a).

SOURCE: 72 FR 2768, Jan. 23, 2007, unless otherwise noted.

§ 2600.10 What does this part do?

This part adopts the Office of Management and Budget (OMB) guidance in subparts A through I of 2 CFR part 180, as supplemented by this part, as NARA's policies and procedures for nonprocurement debarment and suspension. It thereby gives regulatory effect for NARA to the OMB guidance as supplemented by this part. This part satisfies the requirements in section 3 of Executive Order 12549, “Debarment and Suspension” (3 CFR 1986 Comp., p. 189), Executive Order 12689, “Debarment and Suspension” (3 CFR 1989 Comp., p. 235) and 31 U.S.C. 6101 note

(Section 2455, Pub. L. 103–355, 108 Stat. 3327).

§ 2600.20 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in subparts A through I of 2 CFR part 180 (see table at 2 CFR 180.100(b)) apply to you if you are a—

(a) Participant or principal in a “covered transaction” (see subpart B of 2 CFR part 180 and the definition of “nonprocurement transaction” at 2 CFR 180.970.

(b) Respondent in a NARA suspension or debarment action.

(c) NARA debarment or suspension official;

(d) NARA grants officer, agreements officer, or other official authorized to enter into any type of nonprocurement transaction that is a covered transaction;

§ 2600.30 What policies and procedures must I follow?

NARA policies and procedures that you must follow are the policies and procedures specified in each applicable section of the OMB guidance in subparts A through I of 2 CFR part 180, as that section is supplemented by the section in this part with the same section number. The contracts that are covered transactions, for example, are specified by section 220 of the OMB guidance (i.e., 2 CFR 180.220) as supplemented by section 220 in this part (i.e., § 2600.220). For any section of OMB guidance in subparts A through I of 2 CFR 180 that has no corresponding section in this part, NARA policies and procedures are those in the OMB guidance.

Subpart A—General

§ 2600.137 Who in NARA may grant an exception to let an excluded person participate in a covered transaction?

The Archivist of the United States or designee may grant an exception permitting an excluded person to participate in a particular covered transaction as provided in the OMB guidance at 2 CFR 180.135.

§ 2600.220

Subpart B—Covered Transactions

§ 2600.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

Although the OMB guidance at 2 CFR 180.220(c) allows a Federal agency to do so (also see optional lower tier coverage in the figure in the appendix to 2 CFR part 180), NARA does not extend coverage of nonprocurement suspension and debarment requirements beyond first-tier procurement contracts under a covered nonprocurement transaction.

Subpart C—Responsibilities of Participants Regarding Transactions

§ 2600.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

You as a participant must include a term or condition in lower-tier trans-

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actions requiring lower-tier participants to comply with subpart C of the OMB guidance in 2 CFR part 180.

Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

§ 2600.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

To communicate to a participant the requirements described in 2 CFR 180.435 of the OMB guidance, you must include a term or condition in the transaction that requires the participant's compliance with subpart C of 2 CFR part 180 and requires the participant to include a similar term or condition in lower-tier covered transactions.

Subparts E–J [Reserved]

CHAPTER XXVII—SMALL BUSINESS ADMINISTRATION

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PART 2700—NONPROCUREMENT DEBARMENT AND SUSPENSION

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2700.137 Who in the Small Business Administration may grant an exception to let an excluded person participate in a covered transaction?

Subpart B—Covered Transactions

2700.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

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2700.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

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2700.930 Debarring official (SBA supplement to government-wide definition at 2 CFR 180.930).

2700.995 Principal (SBA supplement to government-wide definition at 2 CFR 180.995).

2700.1010 Suspending official (SBA supplement to government-wide definition at 2 CFR 180.1010).

Subpart J [Reserved]

AUTHORITY: Sec. 2455, Pub. L. 103-355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989, 1986 Comp., p. 235); 15 U.S.C. 634(b)(6).

SOURCE: 72 FR 39728, July 20, 2007, unless otherwise noted.

§ 2700.10 What does this part do?

This part adopts the Office of Management and Budget (OMB) guidance in subparts A through I of 2 CFR part 180, as supplemented by this part, as the SBA policies and procedures for non-procurement debarment and suspension. It thereby gives regulatory effect for SBA to the OMB guidance as supplemented by this part. This part satisfies the requirements in section 3 of Executive Order 12549, “Debarment and Suspension” (3 CFR 1986 Comp., p. 189); Executive Order 12689, “Debarment and Suspension” (3 CFR 1989 Comp., p. 235); and section 2455 of the Federal Acquisition Streamlining Act of 1994, Pub. L. 103-355 (31 U.S.C. 6101 note).

§ 2700.20 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in subparts A through I of 2 CFR part 180 (see table at 2 CFR 180.100(b)) apply to you if you are a—

(a) Participant or principal in a “covered transaction” (see subpart B of 2 CFR part 180 and the definition of “nonprocurement transaction” at 2 CFR 180.970);

(b) Respondent in an SBA suspension or debarment action;

(c) SBA debarment or suspension official; or

(d) SBA grants officer, agreements officer, or other official authorized to enter into any type of nonprocurement transaction that is a covered transaction.

§ 2700.30 What policies and procedures must I follow?

The SBA policies and procedures you must follow are the policies and procedures specified in each applicable section of the OMB guidance in subparts A through I of 2 CFR part 180, as that section is supplemented by the section in this part with the same section number. The contracts that are covered transactions, for example, are specified by section 220 of the OMB guidance (i.e., 2 CFR 180.220) as supplemented by section 220 of this part (i.e., § 2700.220). For any section of OMB guidance in subparts A through I of 2 CFR 180 that

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has no corresponding section in this part, SBA policies and procedures are those in the OMB guidance.

Subpart A—General

§ 2700.137 Who in the Small Business Administration may grant an exception to let an excluded person participate in a covered transaction?

The Director of the Office of Credit Risk Management may grant an exception permitting an excluded person to participate in a particular covered transaction under SBA's financial assistance programs. For all other Agency programs, the Associate General Counsel for Procurement Law may grant such an exception.

[72 FR 39728, July 20, 2007, as amended at 73 FR 43348, July 25, 2008]

Subpart B—Covered Transactions

§ 2700.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

In addition to the contracts covered under 2 CFR 180.22(b) of the OMB guidance, this part applies to any contract, regardless of tier, that is awarded by a contractor, subcontractor, supplier, consultant, or its agent or representative in any transaction, if the contract is to be funded or provided by the SBA under a covered nonprocurement transaction and the amount of the contract is expected to equal or exceed \$25,000. This extends the coverage of the SBA nonprocurement suspension and debarment requirements to all lower tiers of subcontracts under covered nonprocurement transactions, as permitted under the OMB guidance at 2 CFR 180.200(c) (see optional lower tier coverage in the figure in the appendix to 2 CFR part 180)

Subpart C—Responsibilities of Participants Regarding Transactions

§ 2700.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

You, as a participant, must include a term or condition in lower-tier trans-

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actions requiring lower-tier participants to comply with subpart C of the OMB guidance in 2 CFR part 180, as supplemented by this part.

Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

§ 2700.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

To communicate to a participant the requirements described in 2 CFR 180.435 of the OMB guidance, you must include a term or condition in the transaction that requires the participant's compliance with subpart C of 2 CFR part 180, as supplemented by subpart C of this part, and requires the participant to include a similar term or condition in lower-tier covered transactions.

Subparts E–F [Reserved]

Subpart G—Suspension

§ 2700.765 How may I appeal my suspension?

(a) If the SBA suspending official issues a decision under § 180.755 to continue your suspension after you present information in opposition to that suspension under § 180.720, you may ask for review of the suspending official's decision in two ways:

(1) You may ask the suspending official to reconsider the decision for material errors of fact or law that you believe will change the outcome of the matter; or

(2) You may request that the SBA Office of Hearings and Appeals (OHA) review the suspending official's decision to continue your suspension within 30 days of your receipt of the suspending official's decision under § 180.755 or paragraph (a)(1) of this section. However, OHA may reverse the suspending official's decision only where OHA finds that the decision is based on a clear error of material fact or law, or where OHA finds that the suspending official's decision was arbitrary, capricious, or an abuse of discretion. You may appeal the suspending official's decision without requesting reconsideration, or you may appeal the decision

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of the suspending official on reconsideration. The procedures governing OHA appeals are set forth in 13 CFR part 134.

(b) A request for review under this section must be in writing; state the specific findings you believe to be in error; and include the reasons or legal bases for your position.

(c) OHA, in its discretion, may stay the suspension pending review of the suspending official's decision.

(d) The SBA suspending official and OHA must notify you of their decision under this section, in writing, using the notice procedures set forth at §§ 180.615 and 180.975.

Subpart H—Debarment

§ 2700.890 How may I appeal my debarment?

(a) If the SBA debarring official issues a decision under § 180.870 to debar you after you present information in opposition to a proposed debarment under § 180.815, you may ask for review of the debarring official's decision in two ways:

(1) You may ask the debarring official to reconsider the decision for material errors of fact or law that you believe will change the outcome of the matter; or

(2) You may request that the SBA Office of Hearings and Appeals (OHA) review the debarring official's decision to debar you within 30 days of your receipt of the debarring official's decision under § 180.870 or paragraph (a)(1) of this section. However, OHA may reverse the debarring official's decision only where OHA finds that the decision is based on a clear error of material fact or law, or where OHA finds that the debarring official's decision was arbitrary, capricious, or an abuse of discretion. You may appeal the debarring official's decision without requesting reconsideration, or you may appeal the decision of the debarring official on reconsideration. The procedures governing OHA appeals are set forth in 13 CFR part 134.

(b) A request for review under this section must be in writing; state the specific findings you believe to be in error; and include the reasons or legal bases for your position.

(c) OHA, in its discretion, may stay the debarment pending review of the debarring official's decision.

(d) The SBA debarring official and OHA must notify you of their decision under this section, in writing, using the notice procedures set forth at §§ 180.615 and 180.975.

Subpart I—Definitions

§ 2700.930 Debarring official (SBA supplement to government-wide definition at 2 CFR 180.930).

For SBA, the debarring official for financial assistance programs is the Director of the Office of Credit Risk Management; for all other programs, the debarring official is the Associate General Counsel for Procurement Law.

[72 FR 39728, July 20, 2007, as amended at 73 FR 43348, July 25, 2008]

§ 2700.995 Principal (SBA supplement to government-wide definition at 2 CFR 180.995).

Principal means—

(a) Other examples of individuals who are principals in SBA covered transactions include:

(1) Principal investigators.

(2) Securities brokers and dealers under the section 7(a) Loan, Certified Development Company (CDC) and Small Business Investment Company (SBIC) programs.

(3) Applicant representatives under the section 7(a) Loan, CDC, SBIC, Small Business Development Center (SBDC), and section 7(j) programs.

(4) Providers of professional services under the section 7(a) Loan, CDC, SBIC, SBDC, and section 7(j) programs.

(5) Individuals that certify, authenticate or authorize billings.

(b) [Reserved]

§ 2700.1010 Suspending official (SBA supplement to government-wide definition at 2 CFR 180.1010).

For SBA, the suspending official for financial assistance programs is the Director of the Office of Credit Risk Management; for all other programs, the suspending official is the Associate General Counsel for Procurement Law.

[72 FR 39728, July 20, 2007, as amended at 73 FR 43348, July 25, 2008]

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Subpart J [Reserved]

CHAPTER XXVIII—DEPARTMENT OF JUSTICE

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PART 2867—NONPROCUREMENT DEBARMENT AND SUSPENSION

Sec.

2867.10 What does this part do?

2867.20 To whom does this part apply?

2867.30 What policies and procedures must be followed?

Subpart A—General

2867.137 Who in the Department of Justice may grant an exception to let an excluded person participate in a covered transaction?

Subpart B—Covered Transactions

2867.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

Subpart C—Responsibilities of Participants Regarding Transactions

2867.332 What method must a participant use to pass requirements down to participants at lower tiers with whom the participant intends to do business?

Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

2867.437 What method must be used to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

Subparts E–J [Reserved]

AUTHORITY: Sec. 2455, Pub. L. 103-355, 108 Stat. 3327; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235; 5 U.S.C. 301; 28 U.S.C. 509, 510, 515–519.

SOURCE: 72 FR 11286, Mar. 13, 2007, unless otherwise noted.

§ 2867.10 What does this part do?

This part adopts the Office of Management and Budget (OMB) guidance in subparts A through I of 2 CFR part 180, as supplemented by this part, as the Department of Justice policies and procedures for nonprocurement debarment and suspension. It thereby gives regulatory effect for the Department of Justice to the OMB guidance as supplemented by this part. This part satisfies the requirements in section 3 of Executive Order 12549, “Debarment and Suspension” (3 CFR 1986 Comp., p. 189), Executive Order 12689, “Debarment and Suspension” (3 CFR 1989 Comp., p. 235)

and 31 U.S.C. 6101 note (Section 2455, Pub. L. 103-355, 108 Stat. 3327).

§ 2867.20 To whom does this part apply?

This part and, through this part, pertinent portions of the OMB guidance in subparts A through I of 2 CFR part 180 (see table at 2 CFR 180.100(b)) apply to any—

(a) Participant or principal in a “covered transaction” (see subpart B of 2 CFR part 180 and the definition of “nonprocurement transaction” at 2 CFR 180.970 (as supplemented by subpart B of this part));

(b) Respondent in a Department of Justice suspension or debarment action;

(c) Department of Justice debarment or suspension official;

(d) Department of Justice grants officer, agreements officer, or other official authorized to enter into any type of nonprocurement transaction that is a covered transaction.

§ 2867.30 What policies and procedures must be followed?

The Department of Justice policies and procedures that must be followed are the policies and procedures specified in each applicable section of the OMB guidance in subparts A through I of 2 CFR part 180, as that section is supplemented by the section in this part with the same section number. The contracts that are covered transactions, for example, are specified by section 220 of the OMB guidance (*i.e.*, 2 CFR 180.220) as supplemented by section 220 in this part (*i.e.*, § 2867.220). For any section of OMB guidance in subparts A through I of 2 CFR part 180 that has no corresponding section in this part, Department of Justice policies and procedures are those in the OMB guidance.

Subpart A—General

§ 2867.137 Who in the Department of Justice may grant an exception to let an excluded person participate in a covered transaction?

Within the Department of Justice, the Attorney General or designee has the authority to grant an exception to let an excluded person participate in a

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covered transaction, as provided in the OMB guidance at 2 CFR 180.135.

Subpart B—Covered Transactions

§ 2867.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

Although the OMB guidance at 2 CFR 180.220(c) allows a Federal agency to do so (also see optional lower tier coverage in the figure in the appendix to 2 CFR part 180), the Department of Justice does not extend coverage of non-procurement suspension and debarment requirements beyond first-tier procurement contracts under a covered non-procurement transaction.

Subpart C—Responsibilities of Participants Regarding Transactions

§ 2867.332 What method must a participant use to pass requirements down to participants at lower tiers with whom the participant intends to do business?

A participant must include a term or condition in lower-tier transactions re-

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quiring lower-tier participants to comply with subpart C of the OMB guidance in 2 CFR part 180, as supplemented by this subpart.

Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

§ 2867.437 What method must be used to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

To communicate to a participant the requirements described in 2 CFR 180.435 of the OMB guidance, the communication must include a term or condition in the transaction that requires the participant's compliance with subpart C of 2 CFR part 180, as supplemented by subpart C of this part, and requires the participant to include a similar term or condition in lower-tier covered transactions.

Subparts E–J [Reserved]

CHAPTER XXX—DEPARTMENT OF HOMELAND
SECURITY

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PART 3000—NONPROCUREMENT DEBARMENT AND SUSPENSION

Sec.

3000.10 What does this part do?

3000.20 Does this part apply to me?

3000.30 What policies and procedures must I follow?

Subpart A—General

3000.137 Who in the Department of Homeland Security may grant an exception to let an excluded person participate in a covered transaction?

Subpart B—Covered Transactions

3000.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

Subpart C—Responsibilities of Participants Regarding Transactions

3000.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

Subpart D—Responsibilities of Department of Homeland Security Officials Regard- ing Transactions

3000.437 What method do I use to communicate to a participant the requirements described in the Office of Management and Budget guidance at 2 CFR 180.435?

Subpart E—I [Reserved]

AUTHORITY: Sec. 2455, Public Law 103-355, 108 Stat. 3327; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235; Public Law 107-296, 116 Stat. 2135.

SOURCE: 74 FR 34497, July 16, 2009, unless otherwise noted.

§ 3000.10 What does this part do?

This part adopts the Office of Management and Budget (OMB) guidance in subparts A through I of 2 CFR part 180, as supplemented by this part, as the Department of Homeland Security policies and procedures for nonprocurement debarment and suspension. It thereby gives regulatory effect for the Department of Homeland Security to the OMB guidance as supplemented by this part. This part satisfies the requirements in section 3 of Executive Order 12549, “Debarment and Suspension” (3 CFR 1986 Comp., p. 189), Execu-

tive Order 12689, “Debarment and Suspension” (3 CFR 1989 Comp., p. 235) and 31 U.S.C. 6101 note (Section 2455, Pub. L. 103-355, 108 Stat. 3327).

§ 3000.20 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in subparts A through I of 2 CFR part 180 (see table at 2 CFR 180.100(b)) apply to you if you are a—

(a) Participant or principal in a “covered transaction” (see subpart B of 2 CFR part 180 and the definition of “nonprocurement transaction” at 2 CFR 180.970);

(b) Respondent in a Department of Homeland Security suspension or debarment action;

(c) Department of Homeland Security debarment or suspension official;

(d) Department of Homeland Security grants officer, agreements officer, or other official authorized to enter into any type of nonprocurement transaction that is a covered transaction.

§ 3000.30 What policies and procedures must I follow?

The Department of Homeland Security policies and procedures that you must follow are the policies and procedures specified in each applicable section of the OMB guidance in subparts A through I of 2 CFR part 180, as that section is supplemented by the section in this part with the same section number. The contracts that are covered transactions, for example, are specified by section 220 of the OMB guidance (*i.e.*, 2 CFR 180.220) as supplemented by section 220 in this part (*i.e.*, § 3000.220). For any section of OMB guidance in subparts A through I of 2 CFR part 180 that has no corresponding section in this part, Department of Homeland Security policies and procedures are those in the OMB guidance.

Subpart A—General

§ 3000.137 Who in the Department of Homeland Security may grant an exception to let an excluded person participate in a covered trans- action?

Within the Department of Homeland Security, the Secretary of Homeland Security has delegated the authority

§ 3000.220

to grant an exception to let an excluded person participate in a covered transaction to the Head of the Contracting Activity for each DHS component as provided in the OMB guidance at 2 CFR 180.135.

Subpart B—Covered Transactions

§ 3000.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

Department of Homeland Security extends coverage of nonprocurement suspension and debarment requirements beyond first-tier procurement contracts under a covered nonprocurement transaction.

Subpart C—Responsibilities of Participants Regarding Transactions

§ 3000.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

You as a participant in a covered transaction must include a term or condition in any lower-tier covered transaction into which you enter, to

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require the participant of that transaction to—

(a) Comply with subpart C of the OMB guidance in 2 CFR part 180; and

(b) Include a similar term or condition in any covered transaction into which it enters at the next lower tier.

Subpart D—Responsibilities of Department of Homeland Security Officials Regarding Transactions

§ 3000.437 What method do I use to communicate to a participant the requirements described in the Office of Management and Budget guidance at 2 CFR 180.435?

You as a DHS component official must include a term or condition in each covered transaction into which you enter, to communicate to the participant the requirements to—

(a) Comply with subpart C of the OMB guidance in 2 CFR part 180; and

(b) Include a similar term or condition in any lower-tier covered transactions into which the participant enters.

Subparts E–I [Reserved]

CHAPTER XXXI—INSTITUTE OF MUSEUM AND LIBRARY SERVICES

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PART 3185—NONPROCUREMENT DEBARMENT AND SUSPENSION

Sec.

3185.10 What does this part do?

3185.20 Does this part apply to me?

3185.30 What policies and procedures must I follow?

Subpart A—General

3185.137 Who in IMLS may grant an exception to let an excluded person participate in a covered transaction?

Subpart B—Covered Transactions

3185.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

Subpart C—Responsibilities of Participants Regarding Transactions

3185.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

3185.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

Subparts E–I [Reserved]

AUTHORITY: 20 U.S.C. 9103(f); Sec. 2455, Pub. L. 103–355, 108 Stat. 3327; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235.

SOURCE: 73 FR 46529, Aug. 11, 2008, unless otherwise noted.

§ 3185.10 What does this part do?

This part adopts the Office of Management and Budget (OMB) guidance in subparts A through I of 2 CFR part 180, as supplemented by this part, as the Institute of Museum and Library Services (IMLS) policies and procedures for nonprocurement debarment and suspension. It thereby gives regulatory effect for IMLS to the OMB guidance as supplemented by this part. This part satisfies the requirements in section 3 of Executive Order 12549, “Debarment and Suspension” (3 CFR 1986 Comp., p. 189), Executive Order 12689, “Debarment and Suspension” (3 CFR 1989 Comp., p. 235) and 31 U.S.C. 6101 note

(Section 2455, Pub. L. 103–355, 108 Stat. 3327).

§ 3185.20 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in subparts A through I of 2 CFR part 180 (see table at 2 CFR 180.100(b)) apply to you if you are a—

(a) Participant or principal in a “covered transaction” (see subpart B of 2 CFR part 180 and the definition of “nonprocurement transaction” at 2 CFR 180.970.

(b) Respondent in an IMLS suspension or debarment action.

(c) IMLS debarment or suspension official;

(d) IMLS grants officer, agreements officer, or other official authorized to enter into any type of nonprocurement transaction that is a covered transaction.

§ 3185.30 What policies and procedures must I follow?

The IMLS policies and procedures that you must follow are the policies and procedures specified in each applicable section of the OMB guidance in subparts A through I of 2 CFR part 180, as that section is supplemented by the section in this part with the same section number. The contracts that are covered transactions, for example, are specified by section 220 of the OMB guidance (i.e., 2 CFR 180.220) as supplemented by section 220 in this part (i.e., § 3185.220). For any section of OMB guidance in subparts A through I of 2 CFR 180 that has no corresponding section in this part, IMLS policies and procedures are those in the OMB guidance.

Subpart A—General

§ 3185.137 Who in the IMLS may grant an exception to let an excluded person participate in a covered transaction?

The IMLS Director has the authority to grant an exception to let an excluded person participate in a covered transaction, as provided in the OMB guidance at 2 CFR 180.135.

Subpart B—Covered Transactions

§ 3185.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

Although the OMB guidance at 2 CFR 180.220(c) allows a Federal agency to do so (also see optional lower-tier coverage in the figure in the appendix to 2 CFR part 180), IMLS does not extend coverage of nonprocurement suspension and debarment requirements beyond first-tier procurement contracts under a covered nonprocurement transaction.

Subpart C—Responsibilities of Participants Regarding Transactions

§ 3185.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

You as a participant must include a term or condition in lower-tier trans-

actions requiring lower-tier participants to comply with subpart C of the OMB guidance in 2 CFR part 180, as supplemented by this subpart.

Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

§ 3185.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

To communicate to a participant the requirements described in 2 CFR 180.435 of the OMB guidance, you must include a term or condition in the transaction that requires the participant's compliance with subpart C of 2 CFR part 180, as supplemented by subpart C of this part, and requires the participant to include a similar term or condition in lower-tier covered transactions.

Subparts E–I [Reserved]

CHAPTER XXXII—NATIONAL ENDOWMENT FOR THE ARTS

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PART 3254—NONPROCUREMENT DEBARMENT AND SUSPENSION

Sec.

3254.10 What does this part do?

3254.20 Does this part apply to me?

3254.30 What policies and procedures must I follow?

Subpart A—General

3254.137 Who in the NEA may grant an exception to let an excluded person participate in a covered transaction?

Subpart B—Covered Transactions

3254.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

Subpart C—Responsibilities of Participants Regarding Transactions

3254.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

3254.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

Subparts E–I [Reserved]

AUTHORITY: Sec. 2455, Pub. L. 103–355, 108 Stat. 3327; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235.

SOURCE: 72 FR 6141, Feb. 9, 2007, unless otherwise noted.

§ 3254.10 What does this part do?

This part adopts the Office of Management and Budget (OMB) guidance in subparts A through I of 2 CFR part 180, as supplemented by this part, as the National Endowment for the Arts (NEA) policies and procedures for nonprocurement debarment and suspension. It thereby gives regulatory effect for the NEA to the OMB guidance as supplemented by this part. This part satisfies the requirements in section 3 of Executive Order 12549, “Debarment and Suspension” (3 CFR 1986 Comp., p. 189), Executive Order 12689, “Debarment and Suspension” (3 CFR 1989 Comp., p. 235) and 31 U.S.C. 6101 note

(Section 2455, Public Law 103–355, 108 Stat. 3327).

§ 3254.20 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in subparts A through I of 2 CFR part 180 (see table at 2 CFR 180.100(b)) apply to you if you are a—

(a) Participant or principal in a “covered transaction” (see subpart B of 2 CFR part 180 and the definition of “nonprocurement transaction” at 2 CFR 180.970.

(b) Respondent in a NEA suspension or debarment action.

(c) NEA debarment or suspension official;

(d) NEA grants officer, agreements officer, or other official authorized to enter into any type of nonprocurement transaction that is a covered transaction;

§ 3254.30 What policies and procedures must I follow?

The NEA policies and procedures that you must follow are the policies and procedures specified in each applicable section of the OMB guidance in subparts A through I of 2 CFR part 180, as that section is supplemented by the section in this part with the same section number. The contracts that are covered transactions, for example, are specified by section 220 of the OMB guidance (i.e., 2 CFR 180.220) as supplemented by section 220 in this part (i.e., § 3254.220). For any section of OMB guidance in subparts A through I of 2 CFR 180 that has no corresponding section in this part, NEA policies and procedures are those in the OMB guidance.

Subpart A—General

§ 3254.137 Who in the NEA may grant an exception to let an excluded person participate in a covered transaction?

The NEA Chairman has the authority to grant an exception to let an excluded person participate in a covered transaction, as provided in the OMB guidance at 2 CFR 180.135.

§ 3254.220

Subpart B—Covered Transactions

§ 3254.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

Although the OMB guidance at 2 CFR 180.220(c) allows a Federal agency to do so (also see options lower tier coverage in the figure in the appendix to 2 CFR part 180), NEA does not extend coverage of nonprocurement suspension and debarment requirements beyond first-tier procurement contracts under a covered nonprocurement transaction.

Subpart C—Responsibilities of Participants Regarding Transactions

§ 3254.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

You as a participant must include a term or condition in lower-tier trans-

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actions requiring lower-tier participants to comply with subpart C of the OMB guidance in 2 CFR part 180, as supplemented by this subpart.

Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

§ 3254.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

To communicate to a participant the requirements described in 2 CFR 180.435 of the OMB guidance, you must include a term or condition in the transaction that requires the participant's compliance with subpart C of 2 CFR part 180, as supplemented by subpart C of this part, and requires the participant to include a similar term or condition in lower-tier covered transactions.

Subparts E–I [Reserved]

CHAPTER XXXIII—NATIONAL ENDOWMENT
FOR THE HUMANITIES

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3369	Nonprocurement debarment and suspension	313

PART 3369—NONPROCUREMENT DEBARMENT AND SUSPENSION

Sec.

3369.10 What does this part do?

3369.20 Does this part apply to me?

3369.30 What policies and procedures must I follow?

Subpart A—General

3369.137 Who in the NEH may grant an exception to let an excluded person participate in a covered transaction?

Subpart B—Covered Transactions

3369.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

Subpart C—Responsibilities of Participants Regarding Transactions

3369.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

3369.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

Subparts E–I [Reserved]

AUTHORITY: 20 U.S.C. 959(a)(1); Sec. 2455, Pub. L. 103–355, 108 Stat. 3327; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235.

SOURCE: 72 FR 9236, Mar. 1, 2007, unless otherwise noted.

§ 3369.10 What does this part do?

This part adopts the Office of Management and Budget (OMB) guidance in subparts A through I of 2 CFR part 180, as supplemented by this part, as the National Endowment for the Humanities (NEH) policies and procedures for nonprocurement debarment and suspension. It thereby gives regulatory effect for the NEH to the OMB guidance as supplemented by this part. This part satisfies the requirements in section 3 of Executive Order 12549, “Debarment and Suspension” (3 CFR 1986 Comp., p. 189), Executive Order 12689, “Debarment and Suspension” (3 CFR 1989 Comp., p. 235) and 31 U.S.C. 6101 note

(Section 2455, Public Law 103–355, 108 Stat. 3327).

§ 3369.20 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in subparts A through I of 2 CFR part 180 (see table at 2 CFR 180.100(b)) apply to you if you are a—

(a) Participant or principal in a “covered transaction” (see subpart B of 2 CFR part 180 and the definition of “nonprocurement transaction” at 2 CFR 180.970).

(b) Respondent in a NEH suspension or debarment action.

(c) NEH debarment or suspension official;

(d) NEH grants officer, agreements officer, or other official authorized to enter into any type of nonprocurement transaction that is a covered transaction;

§ 3369.30 What policies and procedures must I follow?

The NEH policies and procedures that you must follow are the policies and procedures specified in each applicable section of the OMB guidance in subparts A through I of 2 CFR part 180, as that section is supplemented by the section in this part with the same section number. The contracts that are covered transactions, for example, are specified by section 220 of the OMB guidance (*i.e.*, 2 CFR 180.220) as supplemented by section 220 in this part (*i.e.*, § 3369.220). For any section of OMB guidance in subparts A through I of 2 CFR 180 that has no corresponding section in this part, NEH policies and procedures are those in the OMB guidance.

Subpart A—General

§ 3369.137 Who in the NEH may grant an exception to let an excluded person participate in a covered transaction?

The NEH Chairman has the authority to grant an exception to let an excluded person participate in a covered transaction, as provided in the OMB guidance at 2 CFR 180.135.

Subpart B—Covered Transactions

§ 3369.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

Although the OMB guidance at 2 CFR 180.220(c) allows a Federal agency to do so (also see optional lower tier coverage in the figure in the appendix to 2 CFR part 180), NEH does not extend coverage of nonprocurement suspension and debarment requirements beyond first-tier procurement contracts under a covered nonprocurement transaction.

Subpart C—Responsibilities of Participants Regarding Transactions

§ 3369.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

You as a participant must include a term or condition in lower-tier trans-

actions requiring lower-tier participants to comply with subpart C of the OMB guidance in 2 CFR part 180, as supplemented by this subpart.

Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

§ 3369.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

To communicate to a participant the requirements described in 2 CFR 180.435 of the OMB guidance, you must include a term or condition in the transaction that requires the participant's compliance with subpart C of 2 CFR part 180, as supplemented by subpart C of this part, and requires the participant to include a similar term or condition in lower-tier covered transactions.

Subparts E–I [Reserved]

CHAPTER XXXV—EXPORT-IMPORT BANK OF
THE UNITED STATES

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PART 3513—NONPROCUREMENT DEBARMENT AND SUSPENSION

Sec.

3513.10 What does this part do?

3513.20 Does this part apply to me?

3513.30 What policies and procedures must I follow?

Subpart A—General

3513.137 Who at Ex-Im Bank may grant an exception to let an excluded person participate in a covered transaction?

Subpart B—Covered Transactions

3513.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

Subpart C—Responsibilities of Participants Regarding Transactions

3513.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

3513.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

Subparts E–J [Reserved]

AUTHORITY: Sec. 2455, Pub. L. 103–355, 108 Stat. 3327; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235.

SOURCE: 72 FR 30244, May 31, 2007, unless otherwise noted.

§ 3513.10 What does this part do?

This part adopts the Office of Management and Budget (OMB) guidance in subparts A through I of 2 CFR part 180, as supplemented by this part, as the Export Import Bank of the United States (Ex-Im Bank) policies and procedures for nonprocurement debarment and suspension. It thereby gives regulatory effect for Ex-Im Bank to the OMB guidance as supplemented by this part. This part satisfies the requirements in section 3 of Executive Order 12549, “Debarment and Suspension” (3 CFR 1986 Comp., p. 189), Executive Order 12689, “Debarment and Suspension” (3 CFR 1989 Comp., p. 235) and 31

U.S.C. 6101 note (Section 2455, Pub. L. 103–355, 108 Stat. 3327).

§ 3513.20 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in subparts A through I of 2 CFR part 180 (see table at 2 CFR 180.100(b)) apply to you if you are a—

(a) Participant or principal in a “covered transaction” (see subpart B of 2 CFR part 180 and the definition of “nonprocurement transaction” at 2 CFR 180.970, as supplemented by subpart B of this part).

(b) Respondent in an Ex-Im Bank suspension or debarment action.

(c) Ex-Im Bank debarment or suspension official;

(d) Ex-Im Bank grants officer, agreements officer, or other official authorized to enter into any type of nonprocurement transaction that is a covered transaction;

§ 3513.30 What policies and procedures must I follow?

Ex-Im Bank policies and procedures that you must follow are the policies and procedures specified in each applicable section of the OMB guidance in subparts A through I of 2 CFR part 180, as that section is supplemented by the section in this part with the same section number. The contracts that are covered transactions, for example, are specified by section 220 of the OMB guidance (i.e., 2 CFR 180.220) as supplemented by section 220 in this part (i.e., § 3513.220). For any section of OMB guidance in subparts A through I of 2 CFR 180 that has no corresponding section in this part, Ex-Im Bank policies and procedures are those in the OMB guidance.

Subpart A—General

§ 3513.137 Who in Ex-Im Bank may grant an exception to let an excluded person participate in a covered transaction?

(a) The Ex-Im Bank agency head or designee may grant an exception permitting an excluded person to participate in a particular covered transacting. If the Ex-Im Bank agency head or designee grants an exception, the exception must be in writing and

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state the reason(s) for deviating from the government wide policy in Executive Order 12549.

(b) An exception granted by one agency for an excluded person does not extend to the covered transactions of another agency.

Subpart B—Covered Transactions

§ 3513.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

Although the OMB guidance at 2 CFR 180.220(c) allows a Federal agency to do so (also see optional lower tier coverage in the figure in the appendix to 2 CFR part 180), Ex-Im Bank does not extend coverage of nonprocurement suspension and debarment requirements beyond first-tier procurement under a covered nonprocurement transaction.

Subpart C—Responsibilities of Participants Regarding Transactions

§ 3513.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

To communicate the requirements, you must include a term or condition

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in the transaction requiring the participants' compliance with subpart C of this part and requiring them to include a similar term or condition in lower-tiered covered transactions.

Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

§ 3513.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

To communicate to a participant the requirements described in 2 CFR 180.435 of the OMB guidance, you must include a term or condition in the transaction that requires the participant's compliance with subpart C of 2 CFR part 180, as supplemented by subpart C of this part, and requires the participant to include a similar term or condition in lower-tier covered transactions.

Subparts E–J [Reserved]

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PART 3700—NONPROCUREMENT DEBARMENT AND SUSPENSION

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AUTHORITY: Sec. 2455, Pub. L. 103-355, 108 Stat. 3327; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235; 22 U.S.C. 2503(b).

SOURCE: 71 FR 64731, Nov. 22, 2006, unless otherwise noted.

§ 3700.10 What does this part do?

This part adopts the Office of Management and Budget (OMB) guidance in subparts A through I of 2 CFR part 180, as supplemented by this part, as the Peace Corps policies and procedures for nonprocurement debarment and suspension. It thereby gives regulatory effect for the Peace Corps to the OMB guidance as supplemented by this part. This part satisfies the requirements in section 3 of Executive Order 12549, “Debarment and Suspension” (3 CFR 1986 Comp., p. 189), Executive Order 12689, “Debarment and Suspension” (3 CFR 1989 Comp., p. 235) and 31 U.S.C. 6101 note (Section 2455, Pub. L. 103-355, 108 Stat. 3327).

§ 3700.20 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in subparts A through I of 2 CFR part (see table at 2 CFR 180.100(b)) apply to you if you are a—

(a) Participant or principal in a “covered transaction” (see subpart B of 2 CFR part 180 and the definition of “nonprocurement transaction” at 2 CFR 180.970);

(b) Respondent in a Peace Corps suspension or debarment action;

(c) Peace Corps debarment or suspension official; or

(d) Peace Corps grants officer, agreements officer, or other official authorized to enter into any type of nonprocurement transaction that is a covered transaction.

§ 3700.30 What policies and procedures must I follow?

The Peace Corps policies and procedures that you must follow are the policies and procedures specified in each applicable section of the OMB guidance in subparts A through I of 2 CFR part 180, as that section is supplemented by the section in this part with the same section number. The contracts that are covered transactions, for example, are specified by section 220 of the OMB guidance (i.e., 2 CFR 180.220) as supplemented by section 220 in this part (i.e., § 3700.220). For any section of OMB guidance in subparts A through I of 2 CFR 180 that has no corresponding section in this part, Peace Corps policies and procedures are those in the OMB guidance.

§ 3700.137 Who in the Peace Corps may grant an exception to let an excluded person participate in a covered transaction?

The Director of the Peace Corps has the authority to grant an exception to let an excluded person participate in a covered transaction, as provided in the OMB guidance at 2 CFR 180.135.

§ 3700.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

Although the OMB guidance at 2 CFR 180.220(c) allows a Federal agency to do so (also see optional lower tier coverage in the figure in the appendix to 2 CFR part 180), Peace Corps does not extend coverage of nonprocurement suspension and debarment requirements beyond first-tier procurement contracts under a covered nonprocurement transaction.

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§ 3700.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

You as a participant must include a term or condition in lower-tier transactions requiring lower-tier participants to comply with subpart C of the OMB guidance in 2 CFR part 180.

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§ 3700.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

To communicate to a participant the requirements described in 2 CFR 180.435 of the OMB guidance, you as an agency official must include a term or condition in the transaction that requires the participant's compliance with subpart C of 2 CFR part 180, and requires the participant to include a similar term or condition in lower-tier covered transactions.